Central Law Journal.

ST. LOUIS, MO., SEPTEMBER 1, 1905.

SOMETHING INTERESTING ABOUT JUVENILE COURTS—THEIR GREAT IMPORTANCE.

Our recent editorial on the juvenile courts of the state of Utah has brought forth several responses, among them "The Problem of the Children, and how the State of Colorado Cares for Them," a report of the juvenile court of Denver over which the Hon. Ben B. Lindsey so ably presides. The work which Judge Lindsey has done shows what an earnest worker, with heart and soul alive to the interests of humanity, may do. There is no class of persons brought, as a rule, where an insight may be had into human nature in the vast scope of its variations, as that of the lawyer. It is therefore natural to expect of him a deeper interest in the possibilities of a higher development of the human race, from a scientific standpoint, than in any other class, although there are many grand women and men who stand in the forefront of this movement for human good who come from the various walks of life. We expect lawyers to take a great interest in this work, not only because they are fitted to appreciate its needs, but from a consciousness that every true man of his profession should stand for humanity and its uplifting and upbuilding. The greatest work a human being does is that which makes for the benefit and uplifting of his fellow man, and he who is engaged in this kind of work lives the most for himself, for it brings a consciousness of duty well done, a joy in living that nothing else he may do can. He has a storehouse of riches which no other work can fill. He has reached the *summum bonum* who does something for humanity as the days pass. In a recent address before the Yale students Secretary Taft said: "As murder is on the increase, so are all offenses of the felony class, and there can be no doubt that they will continue to increase unless the criminal laws are enforced with more certainty, more uniformity, more severity than they now are. The cure for this growing cancer in the body politic may be found in statutory amendments. If laws could be passed, either abolishing the right of criminal appeal and leaving to the pardoning power, as in England, the correction of judicial wrong; or, instead of that, if appeals must be allowed, then if a provision of law could be enacted by which no judgment of the court below should be reversed except for an error which the court, after reading the entire evidence, can affirmatively say would have led to a different verdict, 99 reversals out of 100 under the present system would be avoided. Second, if the power of the court by statute to advise the jury, to comment and express its opinion to the jury upon the facts in every criminal case, could be restored, and if the state and the defendant were both deprived of peremptory challenges in the selection of a jury, twenty-five per cent of those trials which are now miscarriages of justice would result in the conviction of the guilty defendant, and that which has become a mere game in which the defendant's counsel play with loaded dice, would resume its office of a serious judicial investigation."

The *Law Notes*, from which the above is taken, in an able review, took the secretary to task, in a severe criticism of his address, from which the following extract is taken:

"It has been repeatedly maintained in this and in other journals that the increase of crime in this country is but in a small measure due to the failure to administer the law. Our criminal laws are as efficient as any laws can be to cure the disease of crime. Practically nine out of every ten crimes committed are punished in some manner, the average length of time from arrest to sentence being less than thirty days. Appeals from convictions are taken by defendants in about nine cases in a thousand, and in but two and a half of these nine cases is there a reversal by the appellate courts upon any ground whatever. These are facts, not theories, based upon actual statistics. The reforms urged by Judge Taft do not seem, therefore, to be vitally necessary. The actual remedy for the increase of crime seems to be the taking of some steps distinct and apart from the punishment for crime after it has been committed. Rather must we prevent its ever being committed. The cause of and the opportunity for crime should be the objects of attack. To accomplish this, it may be that we should better educate our paupers, or isolate the criminal

classes, or adopt some similar measures to stop the birth of criminals and the spread of criminal instincts. But no conceivable change in criminal procedure can operate to prevent the breach of penal laws. Punishment never has had and never will have an appreciably deterrent effect upon the commission of crime."

The suggestion in *Law Notes* is certainly in the right direction, and is borne out by the following from the "Problem of the Children," *supra*, p. 33:

"An official requested the judge of the juvenile court to send a 15-year-old boy to jail, giving as his principal reason that, the boy had been in jail twelve times before from the criminal courts, and therefore he should be sent to jail the thirteenth time. It never had occurred to him that the state had failed already twelve times, when he began his dire predictions that to place the boy on probation with such aid as could be afforded him by the court, would end in utter failure. In this particular case the boy turned out well, and after two years is an independent and promising citizen. But suppose probation had failed, it would have had still twelve times the best of the jail. Even in England, where the criminal laws are most rigidly enforced, according to the statistics of its prison inmates, more than half of them are serving a second time. Power under the law may be abused. Mistakes under any law may be made. No system is perfect. If any one conceives the idea that the juvenile court was created for the purpose of correcting or reforming every disorderly child, they are, of course, mistaken. Jails and criminal courts never did that. On the contrary, criminality among the youth of this country has been amazingly on the increase. One-half of the inmates of jails, reformatories and prisons combined are under twenty-four years of age. They are there because of uncorrected delinquency in childhood. While the juvenile court and the probation system will not and cannot entirely overcome delinquency and waywardness, it will do it a great deal better than the jail and the criminal court ever did it. This is the test of its success, rather than the number of children it succeeds in correcting. There are failures under the juvenile law, but there were more failures under the criminal law."

We should like to quote the whole book for it is all good, but space forbids; yet, a glimpse into this most interesting work, a copy of which no doubt could be had by any lawyer making application for it, will be an eye-opener, on the line of the proper method of handling the criminal classes, and is the sensible and reasonable process. The methods suggested by Secretary Taft, have failed, just as is stated in the *Law Notes*, and never can be made the effective means to prevent crime. The secretary ought to be furnished with "The Problem of the Children and How the State of Colorado Cares for Them."

Utah, following the lines of Colorado, is doing the same kind of effective work, under the Hon. Willis Brown, who is another man peculiarly fitted for the position he occupies.

We congratulate these judges in having a work in hand, of so much consequence to the state, to the criminal class and to themselves. May the states they represent fully appreciate them. We give a glimpse into the character of Judge Lindsey and his work in the following: "I know two boys—brothers. The older came to the criminal court before the days of the juvenile court. He is a man to-day and in prison. The younger was equally wayward. He was brought to the juvenile court over four years ago. He came frightened and terrified, just as the brother had several years before to another tribunal. The officer told me the boy was an amazing liar. I replied that he would probably have been a worse one under similar conditions. The man felt sore and mentally resolved that there would be no use in bringing boys to the juvenile court, because the judge did nothing to them, meaning of course, that I did not send them to jail. Personal work for hours and days with that boy, was not his notion of doing something 'to the boy.' One day, months after, in a busy civil session of the court trying a will case involving over two million dollars, the court room door opened, the same boy poked in his tousled head and freckled face. The bailiff 'shoved' him out, but he returned, not with any thought of disobedience, but because he also had learned he had rights there. I ordered a recess of three minutes, to the disgust, I fear, of one or two of the distinguished counsel, and the boy came to the bench, unafraid and smiling now, where he was crying with fear the first time when he was brought there months

before. I prefer a spirit of trust and love to a spirit of fear and hate. You can do more with it in the end." We advise everyone who reads this to send for the book and read the rest. It is interesting and will interest you in the work.

NOTES OF IMPORTANT DECISIONS.

POWER OF A COURT OF EQUITY TO COMPEL A DEFENDANT TO MAKE DISCLOSURES AS TO SOURCE OF TITLE AND TO GRANT RELIEF UPON SUCH DISCLOSURES.—In the case of Bowdish v. Metzger, 81 Pac. Rep. 48, the opinion was by Greene, J. This is a suit in equity for discovery and relief. The court sustained a demurrer to the plaintiff's petition, and, the plaintiff not wishing to amend, judgment was rendered for defendants. Plaintiff states in her petition that she is the legal and equitable owner of the land in controversy, setting out specifically her source of title. She also states that, although she is the legal and equitable owner of the real estate as aforesaid, the defendants wrongfully and unlawfully made some claim of title to such land adversely to her, the exact nature or character of which is unknown, but that, whatever the same may be, it is without foundation, and casts a cloud upon her title. She asks that the defendants be required to answer and disclose the nature and character of their title or interest; that the rights of the parties be determined, and judgment rendered quieting plaintiff's title as against theclaim of defendants. In this state, in a suit in equity to quiet title or remove a delou, it is not necessary for the plaintiff to state in her petition that she is in possession either in person or by tenant. Westbrook v. Schmaus, 51 Kan. 558, 33 Pac. Rep. 306; Grove v. Jennings, 46 Kan. 366, 26 Pac. Rep. 738. A suit for discovery and relief, is a well recognized equity practice. Welles v. Reisen & Grand River R. Co., Walk. Ch. 35; Pool v. Lloyd, 5 Mete. (Mass.) 525; Temple v. Gove, 8 Iowa, 511, 74 Am. Dec. 320; McClanahan v. Davis, 8 How. 170, 12 L. Ed. 1033; Denver v. Roane, 99 U. S. 355, 25 L. Ed. 476; Middletown Bank v. Russ, 3 Conn. 135, 8 Am. Dec. 164; Kimberly v. Sells, 3 Johns. Ch. 467; Laight v. Morgan and others, 1 Johns. Cas. 429; Livingston v. Story, 34 U. S. 632, 9 L. Ed. 245; Livingston v. Livingston, 4 Johns. Ch. 294; Higinbotham v. Burnet, 5 Johns. Ch. 184. The petition in this case is very meager in its statement of facts, but as against a demurrer, we think it sufficient. Without the aid of discovery, the plaintiff would be remediless. She cannot plead that which she did not know and cannot ascertain. Therefore she prayed for discovery, to the end that the validity of defendant's claim might be determined, and the contentions over the title to the land finally settled. The judgment of the court is reversed, and the cause remanded for further proceedings. All the justices concurring.

A bill of discovery must state the matter sought to be discovered; show that it is material and state the nature of the action or defense at law, and not deal in vague inquiries. In the case of Horton v. Mosely, Admr., 17 Ala. 796, the court said: "The general rule in regard to bills of this nature, is that it must set forth the particular matters, in reference to which the discovery is sought, and these should be alleged with sufficient certainty. It should also be shown that the answer of the defendant is essential to a complete defense and that he is capable of giving the discovery sought." See also Shackleford v. Bankhead, 72 Ala. 476. A bill charging that defendants and others, directors of a corporation, have fraudulently withdrawn the assets thereof, and have concealed and suppressed the evidence thereof, and the plaintiffs are desirous of commencing and prosecuting a suit or suits for the recovery of their debt against all or some of those who now are or heretofore have been directors of said corporation, sufficiently shows that the plaintiffs intend to bring the suit and against whom it may be brought. Stebbins v. Cowles, 10 Conn.

A bill of discovery may be asked for the purpose of some suit prematurely brought, or intended to be brought, and should set forth the nature of the claim to support which the suit is intended to be brought. Buckner v. Ferguson, 44 Miss. 677. It must not be lost sight of that a bill of discovery waiving answer under oath cannot be maintained as a bill of discovery. Ward v. Peck, 114 Mass. 121; Badger v. McNamara, 123 Mass. 117; Wells v. River Raisin & G. R. Co., Walk. Ch. 35 (Mich.); Torrent v. Rodgers, 39 Mich. 85; Northrup v. Flaig, 57 Miss. 754; Kidder v. Barr, 35 N. H. 235; Watson v. Murray, 22 N. J. Equity (8 C. E. Green), 257. And where a defendant in equity wishes to obtain some necessary discovery of facts in aid of his defense, or to obtain some relief founded on collateral claims, he should make his answer a cross-bill. Millsaps v. Pfeifer, 44 Miss. 805; Bogert v. Bogert, 2 Ed. Ch. 399 (N. Y.). The charges must be direct and specific to the effect that the defendant has the ability to make the discovery. Bennett v. Wolfolk, 15 Ga. 213; Hough v. Martin, 22 N. Car. (2 Dev. & B. Equity) 379, 34 Am. Dec. 403. On the other hand, an administratrix alleged, in a bill against part of her intestate's heir, that the deceased was incapable, from imbecility, of managing his affairs, and that the defendants knowing this, obtained from him by unfair practices, a conveyance of real estate, of personal property, and of notes and money, without any valuable consideration, and that the plaintiff ought to be in possession of this property, in order to administer upon it. The bill prayed for an answer under oath as to what property the defendants had received from the intestate. Held demurrer, that the bill could not be sustained

as a bill of discovery as it was not averred that any suit was brought or intended, in support of the defense of which the discovery was material. Pease v. Pease, 49 Mass. (8 Metc.) 395. Where a party has an adequate remedy at law as to the relief sought, and there is no allegation in his bill that an action at law is pendi g or to be brought, the bill cannot be maintained for discovery. Haskins v. Burr, 106 Mass. 48; Vol. 16 Cent. Dig., Discovery, Secs. 20-25.

CORPORATIONS—TRUST DEEDS PASSING PROPERTY TO TRUSTEE IN BANKRUPTCY—FORECLOSURE AND INJUNCTION.—In *Re* Jersey Island Packing Co., 138 Fed. Rep. 625, the facts were that the assets of said alleged bankrupt consist of about 4,000 acres of land described in the petition, together with the improvements, machinery, implements, and tools thereon situated, all of the value of $400,000; that on February 14, 1902, a mortgage on said property was executed to the Mercantile Trust Company, a corporation, to secure $100,000, represented by bonds of said corporation; that, as the petitioners are advised and believe, the issue of said bonds was and is illegal and void, for the reason that they were not used for purposes and objects of the company, and were issued neither for money paid, labor done, nor property actually received; that on December 11, 1902, said corporation executed to the Germanic Trust Company, afterwards known as the Central Trust Company, a conveyance and assignment of all the property of said corporation, and on April 27, 1905, said Central Trust Company transferred all of said property to William H. Wright, who in said transfer was alleged to be the owner and holder of a note for $30,000 issued by said Jersey Island Packing Company, and secured by said deeds of trust; that on September 19, 1903, there was filed for record in Contra Costa County, Cal., another deed of trust, executed by said corporation to William H. Wright and Myra E. Wright to secure the payment of $100,000; that in said deeds of trust it is provided that notice of a sale thereunder shall be published in a newspaper in the city and county of San Francisco, as well as a newspaper published in the county in which the property is situated, and petitioners aver that notice has been published under said provisions, and that the time of sale under said notices is May 22, 1905; that William H. Wright is the treasurer of said Jersey Island Packing Company, and that, as petitioners are informed and believe, he has attempted to conceal from said company and others interested the intended sale of said property; that unless restrained by this court, said sale will be made on May 22, 1905, to the irreparable loss and injury of all unsecured creditors, and said trustees under said deeds of trust will be the only bidders at said sale, and will bid in the property for the amount of the indebtedness mentioned therein; that, if all the property of said alleged bankrupt is disposed of as a whole in this court, it will realize sufficient to pay all its indebtedness, secured and unsecured; and that the unsecured claims aggregate about $140,000. The court said:

"It is earnestly insisted on behalf of the petitioners that the district court had no jurisdiction to make the order enjoining the sale; that the deeds of trust are absolute conveyances of the property of the alleged bankrupt, and the right of the trustees thereunder to sell upon default is not and cannot be affected by the proceedings in bankruptcy. Upon the proposition that the trust deeds are absolute conveyances of the property of the alleged bankrupt, and the right of the trustees thereunder to sell upon default is not and cannot be affected by the proceedings in bankruptcy. Upon the proposition that the trust deeds are absolute conveyances, the petitioners rely upon Powell v. Patison, 100 Cal. 234, 34 Pac. Rep. 676, and Moore v. Calkins, 95 Cal. 435, 30 Pac. Rep. 583, 29 Am. St. Rep. 128. The first of these cases goes no further than to recognize the established distinction between a defeasible and an absolute trust, and to say that the latter is a conveyance of property to a trustee for the purpose of selling it to pay debts, the effect of which is to pass the title unconditionally to the trustee and to vest it in him unconditionally and indefeasibly for the purposes of the trust. The second case held only that the instrument then under consideration was a trust deed; that it conveyed to the grantee, who was a creditor of the grantor, the legal title; and conferred on him the power to sell the property thus conveyed, and transmit the legal title to his grantee. The trust deeds of the alleged bankrupt's property in this case are clearly not in the nature of an absolute conveyance. They are conveyances to secure debts of the grantor not then due. 'Like the mortgage at common law, the trust deed passes the legal title to the grantee in those jurisdictions where a mortgage passes such interest, and leaves in the grantor the equity of redemption only. Likewise in those states where it is held that the legal title remains in the mortgagor the same rule is generally applied in favor of the grantor in a trust deed.' 28 Am. & Eng. Enc. of Law (2d Ed.), 753. The grantor of these trust deeds undoubtedly retained an interest in the property conveyed, which in bankruptcy would pass to its trustee for the benefit of its unsecured creditors. *In re* Union Trust Company, 122 Fed. Rep. 937, 59 C. C. A. 461. The filing of a petition in bankruptcy is in substance and effect an attachment and an injunction, and it places the property of the bankrupt constructively in the custody of the court of bankruptcy. Loveland on Bankruptcy, § 150; *In re* Weinger, Bergman & Co. (D. C.), 126 Fed. Rep. 875. Property on which there is a mortgage or other lien passes to the trustee in bankruptcy, and is therefore in the custody of the court of bankruptcy. *In re* Rochford, 124 Fed. Rep. 182, 59 C. C. A. 388; *In re*

Kellogg, 121 Fed. Rep. 333, 57 C. C. A. 547; Chauncey v. Dyke Bros., 119 Fed. Rep. 1, 55 C. C. A. 579; *In re* Booth (D. C.), 96 Fed. Rep. 943. And the beneficial interest of a bankrupt in property held in trust passes, also, in all cases where that interest might have been transferred to another by the bankrupt, or might have been levied upon under judicial proceedings against him. Stanford v. Lackland, 2 Dill. 6, Fed. Cas. No. 12,312; Spindle v. Shreve, 111 U. S. 542, 4 Sup. Ct. Rep. 522, 28 L. Ed. 512. The trustee in bankruptcy has the election to refuse to take possession of mortgaged property, if its value, over and above the incumbrance, is not sufficient to justify an attempt to administer it. It is true that the bankruptcy act provides that liens such as the lienholders had under the trust deeds in this case shall not be affected by bankruptcy, but that is far from saying that such lienholders may, after the commencement of proceedings in bankruptcy against the debtor, proceed to enforce their liens or contracts in the manner prescribed in the instruments which create them; and this is true whether such lien is an ordinary mortgage, or a deed of trust with provision for a strict foreclosure by a notice and sale. The provision of the bankruptcy act that such a lien shall not be affected by the bankruptcy proceedings has reference only to the validity of the lienholder's contract. It does not have reference to his remedy to enforce his right. The remedy may be altered without impairing the obligation of his contract, so long as an equally efficient and adequate remedy is substituted. Every one who takes a mortgage or deed of trust intended as a mortgage, takes it subject to the contingency that proceedings in bankruptcy against his mortgagor may deprive him of the specific remedy which is provided for in his contract.

In the present case there was no jurisdiction over the property of the bankrupt in any other court. The only jurisdiction was in the court of bankruptcy. The interest of the bankrupt in the mortgaged property will pass to the trustee when he is appointed, and in the meantime it is under the protection of the bankruptcy court.

The petitioners also cite *In re* Browne (D. C.), 104 Fed. Rep. 762. In that case McPherson, District Judge, while declining to pass on the question whether the court had jurisdiction to interfere and prevent a fraudulent or oppressive exercise of the right of sale of personal property which had been pledged by the bankrupt more than four months prior to bankruptcy, in a case where it had been agreed that the creditors intended to deal fairly with the property pledged, and to make an honest offer to sell for the best prices that could be obtained, was of the opinion that the bankruptcy act gave the court no authority to interfere between the creditors and the exercise of their right to sell given them by the collateral notes. It may be remarked in this connection that the interest of a pledgee differs from that of a mortgagee. The pledgee has a special property in the thing pledged, which entitles him to the possession, to protect which he may maintain detinue, replevin, or trover, and the interest of the pledgor is not subject to execution. The decision in *Re* Browne may be accepted as authority for the proposition that a district court will not interfere with a sale by a pledgee of the thing pledged, under the power of sale given by the terms of his contract, when there is no claim that such power is exercised in a fraudulent or oppressive manner.

The bankruptcy act provides (Act July 1, 1898, ch. 541, § 2, cl. 15, 30 Stat. 545 [U. S. Comp. St. 1901, p. 3421]) that courts of bankruptcy shall have power to make such orders, issue such process, and enter such judgment, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of the act. Under this provision the court may, upon proper application and cause shown, restrain not only the debtor, but any other party, from making any transfer or disposition of any part of the debtor's property, or from any interference therewith. Beach v. Macon Grocery Co., 116 Fed. Rep. 143, 53 C. C. A. 463.

We are of the opinion that the district court had jurisdiction to make the restraining order. Of the propriety of that order, assuming that the court had the power to make it, there can be no question. All the property of the alleged bankrupt was about to be sold, at the instance of its treasurer, to obtain satisfaction of debts owing to him and his wife, secured by the trust deeds. These facts evidently came to the knowledge of unsecured creditors but a few days before the proposed sale. They had no time in which to bring the creditors together, or to secure bidders for the property, or otherwise to protect their interests. The sale of the property under the trust deeds would have extinguished the equity of redemption. By selling the property under the direction of the bankruptcy court, the interests of all parties may be protected, and the trustees of the trust deeds will not be injured. They will be entitled to the proceeds of the sale to the same extent that they would have been if they had themselves made the sale under the power of sale given them by the trust deeds.

NOTE.—Like the mortgage at common law, the trust deed passes the legal title to the grantee in those jurisdictions where a mortgage passes such interest, and leaves in the grantor the equity of redemption. It has been judicially determined that a trust deed passes the title to the grantee in the follwing cases: Newman v. Jackson, 12 Wheat. (U. S.) 570; Stevens v. Clay, 17 Colo 489, 31 Am. St. Rep. 328; Sargent v. How, 21 Ill. 148; Thornhill v. Gilmer, 4 Smead. & M. (Miss.) 153; Brown v. Doe, 10 Smead. & M. (Miss.) 268; Anderson v. Holman, 1 Jones L. (46 N. Car.) 169; Taylor v. King, 6 Munf. (Va.) 358, 8 Am. Dec. 746. And in the following cases the title was held to be in the grantor: Norman v. Samuels, 17 Iowa, 528; Lenox v. Reed, 12 Kan. 223; Webb v.

Haselton, 4 Neb. 308, 19 Am. Rep. 638; Hurley v. Estess, 6 Neb. 386; Kemp v. Small, 32 Neb. 318; Cullen v. Casey (Neb.), 95 N. W. Rep. 605; Hoffman v. McKall, 5 Ohio St. 124; Brown v. Drakes, 4 Hawks (11 N. Car.), 342, 64 Am. Dec. 637; McLean v. Paschal, 47 Tex. 365.

MASTER AND SERVANT—CHANGING FLAGMAN'S BOX DURING HIS ABSENCE FOR REPAIR, BEING REPLACED TOO NEAR TRACK, STRUCK BY TRAIN—FLAGMAN INJURED.—In the case of Philadelphia, B. & W. R. Co. v. Devers, 61 Atl. Rep. 418, the facts were as follows: The appellee was a flagman in the employ of the appellant at the crossing of a street over its railroad in the city of Chester, in the state of Pennsylvania. His duty was to watch for passing trains, and give notice thereof to persons passing along the highway. For the better performance of his duty, the appellant provided him with a watch box, where he could find shelter when not obliged to be upon the track. He had been so employed for more than seven years. Three tracks, two of them main and one a siding, there crossed the street. The box was placed between the two main tracks. It was about eight feet high, four feet across, and weighed three or four hundred pounds. It had been in use several months. On the morning of the accident it had been moved temporarily, by the employees of the appellant, from its foundation, for the purpose of being repaired. The appellee, whose term of service was at night, was absent while the repairs were being made. He returned to his work before the repairs were fully completed, but after the box had been moved back to the place where it belonged. There was testimony tending to show that it was replaced apparently in its original position with relation to the location of the track, and no change was observable other than that the step had been removed and some alteration had been made in its structure. He testified that on his return he noticed no change in the location of the box.

The substantial question in the case is whether this watch box, under the circumstances of this case, falls within the familiar rule that requires the master to exercise all reasonable care to provide and maintain proper and safe machinery, appliances, and places for his employees, and that such duty he cannot avoid by showing that he has used reasonable diligence in the selection of his agents to perform the work. In such a case the negligence of the servant to discharge this duty would be a negligence imputable to the master, for which he would be responsible, and this is so because there rests on the master a positive duty which he cannot delegate. Russell's Case, 88 Md. 571, 42 Atl. Rep. 214; Jamar's Case, 93 Md. 412, 49 Atl. Rep. 847, 86 Am. St. Rep. 428. But the appellant contends that the watch box ought not to be considered as a structure or appliance, or "a place in which to work," but must be regarded as "a structure used as incidental to the work." The distinction thus sought to be made in order to relieve the master of his obligation, we think is more fanciful than real. It is certainly not borne out by any of the cases cited to support it. Yates v. McCullough Iron Co., 69 Md. 370, 16 Atl. Rep. 280; Baltimore & O. R. Co. v. Stricker, 51 Md. 69, 34 Am. Rep. 291; Maryland Clay Co. v. Goodnow, 95 Md. 330, 51 Atl. Rep. 292, 53 Atl. Rep. 427; American Tobacco Co. v. Strickling, 88 Md. 500, 41 Atl. Rep. 1083. The court said it was the clear duty of the company to construct and maintain this structure in a safe condition, so that it could be safely used. The duty of maintaining, as well as of constructing, suitable and sound appliances, rests upon the master himself, and he cannot subject his employees to risks beyond those which are incident to the employment contemplated at the time of the contract of service, and the employee may presume that this duty has been discharged. Stricker Case, 51 Md. 47, 34 Am. Rep. 291; Baker Case, 84 Md. 19, 35 Atl. Rep. 10. The court also said: "But he did not assume the risk of a watch box placed, without his knowledge, so close to the track as to be liable to be struck by passing trains. A watch box so placed is a dangerous structure. As it stood at the time the appellee was injured, it was a constant menace to those whose duties required them to use it. As was said by the United States Supreme Court in Railroad v. McDade, 191 U. S. 67, 24 Sup. Ct. Rep. 24, 48 L. Ed. 96, where the structure was an overhanging spout, 'it was so devoid of all exigencies of expense, necessity or convenience, so free of any consideration of skill except that of the foot rule, and so entirely destitute of any element of choice or selection, that not to make such a construction safe is a conviction of negligence.' The case was properly submitted to the jury."

EFFECT OF PAYMENT OF A PROMISSORY NOTE AT PLACE OF PAYMENT NAMED IN THE INSTRUMENT.

It is not necessary, of course, that any place of payment be designated in a promissory note, or other like obligation. At maturity, the obligation may be presented to the drawer wheresoever he may be, and if payment be refused, an action can at once be commenced to enforce payment. When notes are executed to a bank, it is customary and almost universal to name a place of payment, and the bank to which the note is made payable is usually designated as the place where payment is to be made. And when a place is thus named in the instrument, certain rights, privileges and duties accrue by which both the maker and payee are to be governed.

One effect of such a stipulation in a note is to authorize a tender of the money at the place named when due. And if the maker, upon maturity, tenders the face of the note and any accrued interest at the place of payment, this amounts to a tender in law and the rights of the parties are governed by the usual rules in cases of tender. One effect of the tender, being to stop interest and cost.[1] The effect of this is to make it the duty to a certain extent of the payee to have the note at the place of payment at the maturity thereof. If he should fail to do this, and the maker should have the necessary money there to make the payment, the payee could not insist on the payment of any interest after this tender at the place named for the purpose of payment. But, in order that the maker may avail himself of this advantage, it is necessary that he keep the tender up, for this is all the offer to pay at the named place amounts to, and it is a familiar rule that a tender, in order to be effective in law, must be kept up and profert *in curia* properly made. This rule applies to cases of tender at the place of payment. And if the maker of the note fails to thus keep the tender up, he loses his protection against damages and cost. If he abandons the tender, he is no longer entitled to the benefits thereof.[2] If the maker should go further and actually pay the note at the place named, regardless of whether the note were still owned by the original payee or whether it had been sent there for collection by an indorsee, a more important question would arise. Will payment of a note at the place named therein relieve the maker in the event the note has been indorsed to another in the usual course of business for value without notice to the transferree of any equities which the maker might assert? In other words, is it the duty of the payee or indorsee of a note to have it ready at the place of payment when it matures as a condition precedent to the right of recovery?

[1] Greely v. Whitehead, 35 Fla. 525; Bank v. Smith, 11 Wheat. 171, 175; Watkins v. Crouch, 5 Leigh (Va.), 522; Bowie v. Duval, 1 Gill & J. (Md.), 175, 182; Mulherin v. Hannum, 2 Yerg. (Tenn.), 81; Nichols v. Pool, 47 N. Car. 23, 28; Reeve v. Pack, 6 Mich. 240; Yeaton v. Berney, 62 Ill. 61; Eaton & Gilbert, Com. Paper, p. 441.

[2] Caldwell v. Cassiday, 8 Cowen, 271; Carley v. Vance, 17 Mass. 388, 392; Mulherrin v. Hannum, 2 Yerg. (Tenn.), 81; Mahan v. Waters, 60 Mo. 167; Faden v. Sharp, 4 Johns. 183; Lyon v. Williamson, 27 Me. 149; Greely v. Whitehead, 35 Fla. 523, 530.

On this point the language of Mr. Chief Justice Ewing, speaking for the court in Weed v. Ven Houten,[3] is instructive. After a careful review of the authorities, the learned jurist, speaking for the court, said: "I have no hesitation in expressing my entire concurrence in the American decisions so far as is necessary for the present occasion. that on a promissory note made payable at a particular place, in an action by the payee against the drawer, a special averment of presentment at the place is not necessary to the formality or validity of the declaration, nor is proof of it requisite on the trial on a plea of *non assumpsit* to sustain the issue on the part of the plaintiff. This rule, I am satisfied, is most conformable to sound reason, most conducive to public convenience, best supported by the general principles and doctrines of the law, most assimilated to the decisions which bear analogy more or less directly to the subject" This language of the learned court was expressly approved by the Supreme Court of the United States in the leading case of Wallace v. McConnell,[4] and the doctrine here announced has become the ruling of the courts of last resort in nearly all the states where the question has been passed upon.[5] It must be considered as fairly settled therefore, that it is not absolutely necessary for the payee or indorsee to demand payment at the place named. Of course in questions of protest, demand can always be made at the place of payment and a failure of the maker to have the necessary money at the place when the in-

[3] 9 N. J. Law (4 Halst.), 189.

[4] 13 Pet. 136, 150.

[5] Sumner v. Ford, 3 Ark. 359, 402; Nichols v. Bowes, 2 Camp. N. P. 498; Brigham v. Smith, 15 N. H. 274; Carley v. Vance, 17 Mass. 389; Greely v. Whitehead, 35 Fla. 523; Dougherty v. Bank, 13 Ga. 287, 293; Walcott v. Van Santvoord, 17 Johns. 248; Caldwell v. Cassidy, 8 Cowen, 271; Eaton & H. Ry. Co. v. Hunt, 20 Ind. 457; Bank v. Smith, 11 Wheat. 171, 175; Ripka v. Pope, 5 La. Ann. 61, 63; Fenton v. Goudry, 13 East, 459; White v. Kehlor, 85 Mo. App. 557; Ruggles v. Patten, 8 Mass. 480; Bank v. Ingerson, 105 Iowa, 349; Bowie v. Duvall, 1 Gill & J. (Md.), 175; McNairy v. Bell, 1 Yerg. (Tenn.), 502; Lyon v. Sandins, 1 Camp. N. P. 423; Dockery v. Dunn, 37 Me. 442; Grissom v. Bank, 87 Tenn. 350, 355; Armistead v. Armistead, 10 Leigh (Va.), 512; Nichols v. Pool, 47 N. Car. 23, 28; Conn. v. Gano, Hammond (Ohio), 483; Eastman v. Fifield, 3 N. H. 333; McKenney v. Whipple, 21 Me. 98; Gammon v. Everett, 25 Me. 66: Hardin v. Sweeney, 14 Wash. 129; Reeve v. Pack, 6 Mich. 240; Montgomery v. Tutt, 11 Cal. 367; Yeaton v. Berney, 62 Ill. 61; Clark v. Moses, 50 Ala. 326; Klindt v. Higgings, 95 Iowa, 529; Eaton & Gilbert, Com. Paper, p. 441.

strument falls due to take it up, would subject it to protest without further search for the maker to demand the payment personally. In fact, this is one of the useful purposes in embodying a place of payment in a promissory note. A note or similar obligation usually provides a place of payment convenient to the payee, and he usually selects the place subject, of course, to the right of the maker to refuse to adopt the suggestion just as he might refuse to agree to any other provision offered. But another consideration should not be lost sight of. This is the question of agency with reference to the collection of the note. If, by the stipulation making a named place the point of payment the firm, person or corporation in control of such place should thereby become the agent of the payee or indorsee to effect the collection at maturity, a payment at such place would be effective to release the maker from any further liability whether the note was at the place of payment or not, and whether or not in the hands, possession or control of the person, firm or corporation where made payable. But it is clear, both from the standpoint of reason and the decisions as well, that an agency for the purpose of making the collection or with authority to receive payment, is not created by the simple act of naming a place of payment in the instrument.[6] The agreement to pay at a named place cannot be consistently held to amount to an agreement to pay to the person in charge of the named place of payment when the instrument has been made payable to order and indorsed to an innocent party in the usual course of business in good faith, or when the payee for any reason does not have it at place of payment for collection. If such were the law, it would materially affect the security of dealing in commercial paper. The bank might fail or go out of business, or the person or firm at whose place payment is to be made may move elsewhere, or, for any reason, discontinue business before the maturity of the instrument. But where a maker of a note, either negligently or otherwise persists in paying the instrument at the place named, he takes the risk of the person to whom he pays it being either the owner of the note, or duly authorized by the owner or holder to make the collection. In other words, where he pays to a person other than the payee, or where he pays to the original payee after the note has been transferred in good faith in the usual course of business before maturity, he thereby makes the person to whom he thus makes payment his agent to take up the note from the legal holder or owner thereof. And if such person neglects or fails to take up the note and thereby satisfy the holder, his failure so to do is the failure of his principal and, therefore, in law, the failure of himself.[7] More than this, though a creditor makes a note payable to order at a certain place, and at maturity the debtor has an amount of money on deposit with the party at whose place of business the note is made payable, such custodian of the money cannot appropriate a sufficiency thereof to make payment of the note without instructions from the maker to this effect. Merely having money on deposit with a bank or other place at which a note is made payable will not justify the custodian of the fund in appropriating it to the payment of any debt the maker may owe, though the instrument or bill evidencing the indebtedness is made payable at the place where money generally belonging to the debtor is on deposit.[8] This is reasonable upon several grounds. Where money is on deposit it is subject to check. Ordinarily, money deposited cannot be withdrawn except by a check or some kind of written order. The debtor is not compelled to pay the obligation out of the fund on deposit. He may prefer to let that remain and arrange about the payment otherwise. But if the bank with which the money is on deposit would be justified in meddling with the financial affairs of its depositor to the extent of assuming to take money coming to

[6] Bank v. Cannon, 6 Minn. 95; Adams v. Improvement Co., 44 N. J. Law 638; Grissom v. Bank, 87 Tenn. 350; Engbert v. White, 92 Iowa, 97; Cummings v. Heard, 49 Mo. App. 139, 147; Clark v. Moses, 50 Ala. 326; Caldwell v. Evans, 5 Bush (Ky.)), 380, 382; Glatt v. Fortman, 120 Ind. 384; Wallace v. McConnell 13 Pet. 136; Ward v. Smith, 7 Wall. 447; Cheney v. Libby, 134 U. S. 68, 83; Hills v. Place, 48 N. Y. 520; Wood v. Savings Co., 41 Ill. 261, 269; Gas Co. v. Pinkerton, 95 Pa. St. 62; Greely v. Whitehead, 35 Fla. 523; Bank v. Ingerson, 105 Iowa 349; Jenkins v. Shinn, 55 Ark. 457; Pease v. Warren, 29 Mich. 10, 12; Zane, Banks and Banking, Sec. 326; Daniel Neg. Instruments (5th Ed.), Sec. 326; Tiedeman, Com. Paper, Sec. 310.

[7] Bank v. Cannon, 46 Minn. 95; Carley v. Vance, 17 Mass. 380; Cheney v. Libby, 134 U. S. 68, Pease v. Warren, 27 Mich. 10, 12; Bank v. Ingerson, 105 Iowa, 351; Daniel, Negotiable Inst. (5th Ed.), Sec. 326, p. 328.

[8] Grissom v. Commercial Natl. Bank, 87 Tenn. 350, 356; Wood v. Savings Co., 41 Ill. 267.

him and pay off his private obligations, this would largely shear the depositor of dominion over his own priva e affairs, and the law would be authorizing some one to attend to this whom the party in interest had not seen fit to thus empower. Such an officious payment would not release the bank from its legal duty to honor any checks which the depositor might see fit to draw against his deposits though of course a bank is usually given an equitable lien on the funds on deposit to the extent of any indebtedness the depositor may owe the bank itself. But aside from considerations of this nature, a bank is a plain debtor to its depositor and may be called upon at any time, without grace, to pay the amount of the deposit at the pleasure of the depositor.

But there are some scattering cases which hold that where a note is payable at a certain place, and the maker, at the maturity of the note, pays the amount necessary at such place, this discharges the note and relieves the maker from further liability, though the note may have been indorsed to a third party for value before due in good faith, or the original payee may not have it there for collection. The question was one of difficulty and vexatious uncertainty in England until it was finally put at rest in that kingdom by statute wherein it was provided that an acceptance payable at a named place should be deemed a general acceptance unless otherwise specifically qualified by the instrument itself or the indorsement of acceptance. Sec. 228 of Story on promissory notes is a rock on which the American cases holding that payment at the place named was payment to all legal intents and purposes, seem to have stumbled and, in the light of further development of the law on the subject, gone down before the irresistible weight of both reason and authority. The case of Lazier v. Horan,[9] was decided largely on the authority of Judge Story. The text of this celebrated section is as follows: "If by such omission or neglect of presentment or demand the maker has sustained any loss or injury, as if the bill or note were payable at a bank, and the acceptor or maker had funds there at the time, which have been lost by the failure of the bank, then and in such case the acceptor or maker will be exonerated from liability to the extent of the loss or injury so sustained. It is noticeable that the learned commenator lays down the rule that all the law requires of the maker is to "have funds there at the time." He does not say that the maker must pay the amount except by having the funds there. It is to be regretted that so learned a commentator and jurist as Judge Story should have fallen into this error, though it may be said in mitigation that a number of the English authorities warranted the contention which he made. In note one to this section, the learned commentator expresses his dissent in the leading case of Wallace v. McConnell,[10] though this dissent was not recorded in the proceedings of the court in that case. The passage, therefore, is but the individual opinion of a one time judge of the Supreme Court of the United States who dissented from his fellows. It reflects the views of the single dissenting judge in a leading case which has been followed time and again by the courts of last resort throughout the land. The Supreme Court of Arkansas in a comparatively early case stumbled on this authority, but fortunately the reference thereto did not amount to anything more than mere *dicta*.[11] And the same court in later cases has conformed to the great weight of authority.[12] The case of Lazier v. Horan, *supra*, was subsequently repudiated by the Supreme Court of Iowa in a well considered and ably reasoned case which will be found very instructive.[13] And the error of Judge Story and the cases which he follows is demonstrated very forcibly in the case of Commercial National Bank v. Grissom.[14] There can be no reasonable pretext for the contention that the fact of the maker of a negotiable note having money on deposit in a bank at which it has been made payable will operate as a payment of the obligation whether the same is ever presented there or not. If the indorsee or payee should fail to present the note, certainly it could not be very well contended that the money which the maker had on deposit in that bank to the credit of his individual private account suddenly became the property of the payee or indorsee of a note payable at the bank the instant that instrument fell due. But nothing less could

[9] 55 Iowa 75.

[10] 13 Pet. 136.

[11] Prior v. Wright, 14 Ark. 189, 191.

[12] Jenkins v. Shinn, 55 Ark. 457; State Natl. Bank v. Hyatt, 86 S. W. Rep. 1002.

[13] Bank v. Ingerson, 105 Iowa 351.

[14] 87 Tenn. 350.

be the case if it is to be held that the note is paid at maturity provided the maker had funds in the bank to his credit at the time of maturity. And the situation is not improved any by the maker directing the bank to make the payment unless the bank obeys his instructions. The bank would not be compelled to obey the instructions of the payee as there is no privity in such cases between the bank and payee. Of course if the payee should authorize the person in charge of the place of payment to collect the note, a payment to such person by the maker would be a discharge. But in the absence of such authority to collect, the maker cannot successfully plead that he had the money at the bank or other designated place ready to pay it, and the owner failed to present it there.[15] From the numerous authorities on the questions, it would seem that the following propositions are fairly deducible:

1. The maker of a note cannot discharge it by payment at the place named in the instrument unless the note is there for collection, or its collection at such place is authorized by the holder.

2. That, in depositing funds in bank or elsewhere with instructions to make payment, this merely constitutes the person with whom the money is thus deposited the agent of the maker for whose failure to obey instructions the person appointing him is responsible, not the holder of the note.

3. That a tender of the money at the place of payment and time of maturity is not payment, and only stops interest and cost when kept up in manner required by law.

4. That the holder of a note is not required by law to demand payment at the place designated, but may present the instrument either personally or judicially at any time within the period of limitations.[16]

5. That where money is deposited in a bank at which a note is made payable with instructions to pay the note, and the bank fails before it pays the note in conformity to instructions received from the maker, the loss falls on the maker of the note, not the holder thereof.

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[15] State Natl. Bank v. Hyatt, 86 S. W. Rep. 1002.

[16] Mosser v. Crisswell, 150 Pa. St. 409, 413; Cox v. Phelps, 65 Ark. 1.

CONSTITUTIONAL LAW — IMPAIRMENT OF OBLIGATION OF CONTRACT—RESERVATION OF POWER TO CHANGE FRANCHISE CONDITIONS BY MUNICIPAL CORPORATION—STREET PAVING—LIABILITY.

MARSHALLTOWN LIGHT, POWER & RY. CO. v. CITY OF MARSHALLTOWN.

Supreme Court of Iowa, June 14, 1905.

Code, § 1619, provides that the articles of incorporation, by-laws, rules, and regulations of domestic corporations shall at all times be subject to legislative control, and that every franchise obtained by such corporations may be subjected to conditions imposed on the enjoyment thereof whenever the general assembly shall deem it necessary for the public good. Held, that section 834, providing that all street railway companies shall be be required to make, reconstruct, and repair all paving between the rails of their tracks and one foot outside thereof at their own expense, is not repugnant to the constitutional inhibition against the impairment of the obligation of a contract merely because it was made applicable to a corporation that had been granted a franchise, prior to its enactment, for the operation of a street railway, purporting to exempt it from liability for street paving.

Irregularities in the levy of an assessment for street paving, of which no complaint is made before the city council, cannot be questioned in the district court nor on appeal to the supreme court.

MCCLAIN, J.: In June, 1892, a franchise was granted by the city Marshalltown to A. T. Birchard, his successors and assigns, to construct an electric street railway in the streets of the city. The proposition to grant such a franchise was submitted to and approved by the electors of the city, and the ordinance was duly accepted by said Birchard and his assignee, the plaintiff in this action. The ordinance contained the following provisions:

"Section 8. Whenever the said A. T. Birchard, his successors and assigns shall make excavations upon the streets or alleys in the construction of said road, they shall put the street in as good repair as near as practicable as it was at the time of such excavation, but if said grantee, his successors or assigns, shall desire to use cross ties and what is called a 'T' rail, they may do so, but where the said street is not paved they shall spike to the ties out-side and inside the rails a strip of lumber four inches wide and of sufficient thickness to come within one-half inch from the top of the rail outside and inside; such strips to run the entire length of the railway and its switches where said streets are not paved and to be kept in good repair by said grantee, his successors or assigns. But the said A. T. Birchard, his successors or assigns, shall not in any case be required to pave, macadamize or make any improvements upon the streets, except as provided in this section."

Afterwards street car tracks were constructed by the plaintiff on the streets which are referred to in these actions, and subsequently proper steps were taken by the city council to have said streets

paved and the cost thereof taxed, as provided by law, to the abutting property owners and to the plaintiff. At the time this paving was authorized and provided for, which was in 1902, the following statutory provisions, found in section 834 of the code, were in force and applicable to the defendant city: "All * * * street railway companies [shall] [be required] to make, reconstruct and repair all paving * * * between the rails of their tracks, and one foot outside thereof at their own expense, unless by ordinance of the city or by virtue of the provisions or conditions of any ordinance of the city, under which said * * * street railway may have been constructed or may be maintained, it may be bound to pave * * * other portions of said street, and in that case said * * * street railway shall make, reconstruct and repair the paving * * * of that part of the street specified by such ordinance."

At the time the franchise was granted to plaintiff's assignor, there was no statutory provision applicable to cities of the second class, to which class the defendant city belongs, requiring street car companies to pay any portion of the cost for paving streets on which their lines were located, and the two questions presented by these appeals are: First, whether the provision in the franchise granted to plaintiff's assignor exempting him and his assigns from any requirement to pave except as provided in that franchise constituted a contract which could not be affected by the subsequent legislation imposing such liability on all street car companies; and, second, whether the provision in the ordinance granting the franchise, that Birchard and his assigns should spike strips of lumber four inches wide along each side of the rails of the street car tracks, constituted a provision as to paving other portions of the street than those required by the statute to be paved by street car companies, so as to bring the plaintiff company within the exception contained in the statute in that respect. There is no other ordinance of the city than that granting the franchise to plaintiff's assignor which contains any provision as to the portions of the street which street car companies may be required to pave.

1. As to the provisions of the franchise ordinance exempting plaintiff from any requirement as to paving except as provided therein, the argument for appellant is that it constitutes a contract which cannot be impaired by subsequent legislation, and that therefore the statutory provision already quoted is unconstitutional so far as it purports to impose any liability on appellant with reference to paving other than that contained in the ordinance. But this is no longer a debatable question. At the time the franchise was granted there was in force a statutory provision (section 1090 of the Code of 1873) which has been retained in the Code of 1897, as follows: "Sec. 1619. The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used or enjoyed, by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good." The construction of this provision was involved in a case where the city ordinance provided for assessing to a street railway company the cost of paving between the rails, and the state statute subsequently required that such companies pay the expense of paving between the rails and for the space of one foot outside of the rails. Referring to the statutory provision already referred to as Code, § 1619, the court held that the statutory extension of the liability of the street car company for paving was not in violation of any contract rights of the company, and the court says: "If the city had made no provision in the original grant on the subject, the power of the state to impose the condition would hardly be doubted by any one; but if the power is reserved to the state, it would not be the subject of contract between plaintiff [the street car company] and the municipality. The state has not by any legislation on the subject delegated to the municipal corporations it has created any of the rights or powers reserved by the statute above." Sioux City R. Co. v. Sioux City, 78 Iowa, 742, 39 N. W. Rep. 498. See, also, the opinion in another case of the same title, and involving the same question, 78 Iowa, 367, 43 N. W. Rep. 224. On appeal to the Supreme Court of the United States it was urged that the imposition of an additional burden as to paving impaired the obligation of the contract embodied in the ordinance granting to the street car company its franchise; but the conclusions reached by this court were approved of in the following language: "Under section 1090 of the Iowa Code (section 1619 of the present Code), the legislature had the power not only to repeal and amend the articles of incorporation of the company, but to impose any conditions upon the enjoyment of its franchise which the General Assembly might deem necessary for the public good. The reservation of this power was a condition of the grant. The city council could make no arrangement with the company which would not be subject, under that section, to the superior power of the General Assembly. * * * Moreover, the city derived from the state alone its power to grant a license to the company. The right to operate the railway in the streets is a franchise obtained through power given to the city by the state, but the state reserved the power to regulate such franchise and impose conditions upon it. It reserved the power to determine the question of the exemption of the company from taxation, and to prescribe what burdens should be imposed upon it for the public good in the enjoyment of

its franchise. Manifestly, such power of the state would exist if the right to occupy the streets with tracks was granted to the company directly by an act of the legislature of the state; and the case is not changed by the fact that the franchise was granted by the city. There is nothing in the ordinance of the city council which takes away the power of the state and the city to impose additional taxes on the property of the company, or which indicates an intent that no further or different tax should be subsequently imposed on its property. * * * No question can arise as to the impairment of the obligation of a contract, when the company accepted all of its corporate powers subject to the reserved power of the state to modify its charter and to impose additional burdens upon the enjoyment of its franchise. Under the act of March 15, 1884 (Laws 1884, p. 18, ch. 20), it was made a condition of the enjoyment of its franchise by the company that, when the city should determine that the streets should be paved, the company should bear a certain portion of the cost thereof, and any prior contract between the company and the city in regard to paving was subject to the provisions of section 1090 of the Code. There was nothing in the ordinance of December 12, 1883, which bound or could bind the city not to exercise its statutory authority to impose other conditions upon the exercise of the rights of the company." Sioux City R. Co. v. Sioux City, 138 U. S. 98, 11 Sup. Ct. Rep. 226, 34 L. Ed. 898. The only distinction which counsel attempt to draw between these cases and the case before us is that in the Sioux City ordinance there was no express exemption; but the language of the opinions clearly indicates that the line of reasoning relied upon would have been equally satisfactory in those cases had there been an express exemption. The very point of the decision in those cases was that the city could not make a contract which would preclude legislation on the part of the state imposing additional burdens. The same principle is announced in Storrie v. Houston City R. Co., 92 Tex. 129, 46 S. W. Rep. 796, 44 L. R. A. 716. In that case the court adopts the views expressed in the Sioux City cases above cited. There is nothing in the case of Lacey v. Marshalltown, 99 Iowa, 367, 68 N. W. Rep. 726, inconsistent with the doctrine of the Sioux City cases, for the only point decided is that under the statutory provisions involved in that decision it was left optional with the city to determine whether or not it should compel a street railway to pay for a part of the paving, and, if it did not see fit to do so, an abutting property owner could not complain that a part of the cost was not taxed to a street railway company occupying the street. There seems to have been no intention in the case of Ft. Dodge Electric Light & Power Co. v. Ft. Dodge, 115 Iowa, 568, 89 N. W. Rep. 7, to treat the question here involved as in doubt, for it is expressly said in that case that no such question is raised.

2. The contention that the provisions of the franchise ordinance already quoted brings the case within the exception of Code, § 834, may be disposed of very briefly. The exception in that section is of cases where by ordinance the street railway is bound to pave other portions of the street than the portions referred to in the statute. But under the provisions of the the franchise ordinance already quoted, there is no requirement whatever as to paving. The provision is that the street car company may use cross-ties and what is called a T-rail, but "where the said street is not paved they shall spike to the ties outside and inside the rails a strip of lumber four inches wide; * * * such strips to run the entire length of the railway and its switches, where said streets are not paved," etc. How this provision can be tortured into the semblance of a requirement for the paving by the street car company of a portion of the street we are entirely unable to see, nor do we think it at all pertinent to follow counsel in a discussion of the meaning of "paving" and the substances or materials which may be used in paving. It seems to us plain that there was no intention on the part of the city to require the paving by the street railway company of a space four inches wide on each side of each rail of its track, where constructed through streets not otherwise paved. It is only on unpaved streets that this form of construction is required, evidently as a convenience to the public in the use of such streets for driving in the event that the street car company should use on such unpaved streets cross-ties and a T-rail. If there was no provision in the ordinance for taxing any portion of the paving to the street car company, it is within the direct provision of Code, § 834, and not within the exception.

3. Complaint is made that the council, in estimating the number of square feet of paving for which the plaintiff should pay, included not only the space between the rails and the space of one foot in width outside the rails, but also the space occupied by the rails themselves. No complaint on this account was made before the city council, and therefore the question could not be properly raised in the district court nor on appeal to this court. Such objection could very easily have been made specific, and the general complaint presented to the council, that its proceedings in attempting to levy and assess these paving taxes against the plaintiff are "in many other respects irregularly invalid and without authority of law," was wholly insufficient to raise any such question. We have no occasion, therefore, to pass upon the question as now presented.

Finding no errors in the conclusion reached by the district court, its judgment in each case is affirmed.

NOTE.—*Initiative and Referendum.*—We note this case because it involves questions which are of practical value in the consideration of contracts between cities and street railways. There are many small cities which are considering the question of contracts with newly organized street railways, and many older

and larger ones having contracts with street railways, or about to make new ones, to which this question will be of much interest. While the questions presented are largely questions which relate to legislative enactments the lesson which this case teaches is one of great importance to every city. This case teaches the value of having grants made by the legislature wide enough to enable the city to make any reasonable regulation, or impose upon street railways any reasonable obligation, in view of the franchise granted the cities. There ought not to be any legislative restrictions as to the ordinary business between a city and the street railways. The conditions under which franchises are granted, are so very different, that each case ought to be one between the city and the corporation for which a franchise is asked to be granted. The legislative grant should not be limited so as to leave a city council hampered in its powers to act, and to make such reasonable regulations as the circumstances of each particular case may require. Of course, where a legislature grants to a city unlimited power to make such contracts, as under the circumstances may seem just, every question of special taxation should be referred back to the voters of the municipality for confirmation or rejection, and thus keep the question within constitution's limits as to the sovereignty of the common sense of the most of the people.

The "initiative and referendum" is bound to grow in favor in our cities, because it meets the needs of the people and gives a wider scope of action in the people and enables a city to act at once, in any matter which may require quick action, and does not need to wait either the legislature or the slow process of the courts, in the construction of legislative enactments, as is now so frequently the case. Granting cities full power to regulate their own affairs, according to the common sense of the majority, is the reasonable legislative function. It will do more to prevent frauds and better the conditions as well as engender a livelier interest in their cities by the citizens thereof themselves than has hitherto been the case under restricted powers. This has proven true of those cities acting under broad legislative grants. As the lawyers are the law-makers, these are questions which should interest all lawyers and although not new, yet, are in the infancy of possible development.

JETSAM AND FLOTSAM.

A FORGOTTEN DOCTRINE AS TO VOLUNTARY TRUSTS.

It would appear to be commonly supposed that because, in conformity with the well-known doctrine of equity, specific performance will be refused of a voluntary gift or conveyance, where, by the terms of the instrument by which it is effected, the gift or conveyance is imperfect and incomplete, or the trust unexecuted, the whole instrument must necessarily be nugatory, and that the beneficiaries are without remedy or relief where the donor or settlor refuses to carry out the provisions of the instrument. The fallacy, under certain circumstances, of such a wide and sweeping proposition became apparent in the case of *Re* Gardner, Thorpe v. Hoskin, which came before Swinfen Eady, J., on the 9th inst. in the shape of an adjourned summons.

In that case a post-nuptial settlement was executed by a husband and wife in the year 1880, which, after assigning certain property of the wife, or of the husband in her right, to trustees for the ultimate benefit of the children of the wife, purported further to assign to the trustees of the settlement all after-acquired property of the wife, or of the husband in her right, upon similar trusts for the ultimate benefit of the children. The husband died in 1898, and the wife subsequently re-married and eventually became entitled to certain real and personal property under the wills of various deceased persons. The originating summons was issued for the purpose of determining whether the property passing to the wife under the wills should be retained by her as her absolute property, or handed to the trustees of the settlement for the ultimate benefit of the children.

Had the settlement gone no furher than the assignment of the after-acquired property, there would have been no doubt that equity could have afforded no relief to the children, and that the wife would have been held absolutely entitled to the property in question. The settlement, however, contained the usual covenant for further assurance on the part of the husband and wife; and although the case was ultimately decided in favor of the wife upon the ground that at the date when the settlement was executed she could only contract with regard to such separate estate as she actually possessed at the time when the engagement was entered into (Pike v. Fitzgibbon, 17 Ch. D. 454), it became evident that the decision must have been in favor of the children had the case been decided upon the issue as to whether the wife remained liable to damages for breach of the covenant for further assurance.

The cases which have any bearing to the contrary were cited by counsel for the wife, and it was also contended that the covenant, being merely ancillary to the assignment of the after-acquired property, must be void equally with the assignment itself; but upon the whole it appears clear that, until overruled by the court of appeal, Cox v. Barnard (1850, 8 Hare, 310) and Hales v. Cox (1863, 32 Beavan, 118) are authorities for the proposition that in the case of a voluntary conveyance or settlement which the court will not enforce by specific performance, the donor or settlor will, if the instrument contains a covenant for further assurance, quiet enjoyment, or the like, remain liable at law to damages for breach of the covenant if he refuses to execute the contract; the measure of the damages in such a case being the exact amount of the property in question. The result then will be that when the court is asked to determine the rights of the parties under an imperfect voluntary settlement of property, wherever there is a covenant on the part of the donor or settlor for the breach of which he would be liable to damages upon the authority of Cox v. Barnard or Hales v. Cox, *ubi supra*, the consequences will be practically the same as though the court had power to grant specific performance, except that the covenantee will be postponed to creditors for value of the covenantor. *Re* Earl of Lucan, 45 Ch. D., at p. 473. It is true that, strictly speaking, the proper remedy of the beneficiaries, under such a settlement, would be an action at law for breach of the covenant; but, following the decision in Cox v. Barnard, the chancery division would probably determine the rights of the parties with regard to the property in question, where it is asked to do so upon an originating summons, or in any other manner, as being best able to estimate the damages arising from the breach. This is a point which is likely to be overlooked, but should be carefully borne in mind in preparing voluntary settlements, or advising as to their effect.

JURY TRIALS.

The importance of juvenile courts is emphasized by the following from "*Law Notes*" of August: "It has been repeatedly maintained in this and in other journals that the increase of crime in this country is but in a small measure due to the failure to administer the law. Our criminal laws are as efficient as any laws can be to cure the disease of crime. Practically nine out of every ten crimes committed are punished in some manner, the average length of time from arrest to sentence being less than thirty days. Appeals from convictions are taken by defendants in about nine cases in a thousand, and in about two and a half of these nine cases is there a reversal by the appellate courts upon any ground whatever. These are facts not theories, based upon actual statistics. The reforms urged by Judge Taft do not seem, therefore, to be vitally necessary. The actual remedy for the increase of crime seems to be the taking of some steps distinct and apart from the punishment for crime after it has been committed. Rather must we prevent its ever being committed. The cause of and the opportunity for crime should be the objects of attack. To accomplish this, it may be that we should better educate our paupers, or isolate the criminal classes, or adopt some similar measures to stop the birth of criminals and the spread of criminal instincts. But no conceivable change in criminal procedure can operate to prevent the breach of penal laws. Punishment never has had and never will have an appreciably deterrent effect upon the commission of crime."

BOOK REVIEWS.

OLIVER'S PRECEDENTS AND FORMS OF PRACTICE, BY BENJAMIN OLIVER.

This is the fifth edition, revised and enlarged by Boardman Hall, LL. B. While the work is largely devoted to Common Law forms and precedents, it is yet, nevertheless a valuable work for any lawyer, whether he practices under the Code or under the Common Law methods of procedure.

Lawyers, who are familiar with both methods of procedure, universally commend the study of Common Law pleading and practice to law students. There is something in the distinctions made by the Common Law practice, which brings out the meaning of the law much more clearly and definitely than the Code practice and thus enables a student to distinguish between Common Law and equity much clearer than by the Code practice, which was supposed would have a tendency to awaken a keener and more appreciative interest in equitable doctrines. The contrary has been demonstrated in the practice under the Code. The fact that in Code states the schools are beginning to require a thorough study of Common Law pleading and practice is significant. There is no way to understand pleading and practice so readily, as to study the forms carefully compiled and classified, as they are, in this work. The practitioner is in need of such a work, if he would be most careful in grasping the full meaning and purport of the proceeding he may wish to pursue, and such a work guards against leaving out some important matter which is ofttimes lost sight of, when there is need for prompt action. This work is better prepared to meet the wants of the Code practitioner than any previous edition, and every lawyer ought to have it.

It is published by Little, Brown & Co., Boston, and is contained in 773 pages and up to the standard of the publisher's work. It is hardly necessary to say that it is first-class.

HUMOR OF THE LAW.

A young lawyer just beginning practice was one day delighted with the prospect of a client, in the shape of a raw Irishman, who came into his office with the following greeting: "Air yez a lyer?" Being informed that he was, the prospective client related the facts of the case, which to the mind of the young lawyer promised anything but success, and he so informed this son of Erin, who, nothing daunted, replied: "Well, now, o'il tell yez phwat o'il do. If yez 'll take me case an' throy it, an' 'll give the other fellow the divil whoile yez are doin' it, o'il give yez tin dollars."

John J. McSwain, of Greenville, S. Car., sends us the following very happy humorous illustration of a contract as given by a South Carolina magistrate in his charge to a jury: "The attorney for the defendant, in an action upon contract, had made an oral request of the magistrate to charge that in order to constitute a contract, the minds of the parties must meet upon the same subject in the same sense. The magistrate replied: 'Yes, gentlemen of the jury, that is good law; it is just like welding two pieces of iron. Both ends must be red hot at the same time when the hammer strikes, in order to weld. If one is hot and the other cold, they won't tie together. I charge you that as matter of law and matter of fact.'"

WONDERED WHY HE LOST HIS JOB.

One day a lawyer of considerable practice, in a large country town, had in his employ a young graduate, who was formerly one of his "Varsity nine." He was to pitch in a game against a rival town nine, on the grounds of the rival. The older lawyer knew there would be a number of clients in on Saturday, the day of the game, and while he was exceedingly anxious to witness the game, yet, did not want his clients to know that he had deserted them for a game of ball. Having no one else but a green specimen from the "dear old sod," whom he had employed as a man of all work, he requested him to keep office and tell his clients he was away on important business. He was somewhat careless in giving his instructions, in that he said to his servant: "Tell them I have been suddenly called to another town on important business, or give them some good evasive answer." During the day a number of people called, and upon the attorney's return he inquired of Pat how he got along. "Faith," says Pat, "it was not much bother I had wid 'em." "Well," says his employer, "what did you say to them?" "Well," answered Pat, "oi was after givin' 'um an evasive answer." "And what was that?" replied the lawyer. "Faith," rejoined Pat, "Oi axed thim was their grandmither a monkey." "What did they say to that!" exclaimed the astonished lawyer. "Shure, sur," rejoined Pat, "they looked mad loike and wint strait across the way to lyer Ketchums."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACKNOWLEDGMENT—Validity —An agent and attorney at law of a lender of money, who is a notary public, may lawfully attest a security deed given to secure the loan negotiated by him.—Austin v. Southern Home Building & Loan Assn., Ga., 50 S. E. Rep. 382.

2. ACCORD AND SATISFACTION—Plumbing Bill as Set Off to Rent.—Where plaintiff, though refusing to accept a check and certain plumbing bills in full for rent, cashed the check, he thereby accepted the check as satisfaction.—Cornelius v Rosen, Mo., 86 S. W. Rep. 500.

3. ACCOUNT—Parties.—Complainant's husband held not a necessary party, under the circumstances, to a suit by complainant against defendant for an accounting.—Lasley v. Delano, Mich., 102 N. W. Rep. 1063.

4. ADVERSE POSSESSION—Character of Defendant's Tenure.—Where defendant claimed land sued for by adverse possession, it was immaterial that plaintiffs did not know the character of defendant's tenure.—Kennedy v. Maness, N. Car., 50 S. E. Rep. 450.

5. ADVERSE POSSESSION—Parol Gift of Land.—A parol gift of land, perfected by possession and improvements for more than seven years, gives the donee a legal title.—Brown v Norvell, Ark., 86 S. W. Rep. 306.

6. ADVERSE POSSESSION—Squatters —Persons in possession of land which they believe belongs to the state held mere squatters, and not in adverse possession thereof.—Whittaker v. Thayer, Tex., 86 S. W. Rep. 364.

7 ADVERSE POSSESSION—Trespass to Try Title.—In a country where much of the lands are unoccupied, continued possession is not indispensable to a presumption of a grant from the exercise of acts of ownership.—Ortiz v. State, Tex., 86 S. W. Rep. 45.

8. APPEAL AND ERROR—Assignment of Errors.—An assignment of error, failing to specify any ground of objection to the evidence therein set forth, cannot be considered.—Altgelt v. Elmendorf, Tex., 86 S. W. Rep. 41.

9. APPEAL AND ERROR—Cross Assignments of Error.—Cross-assignments of error objecting to sufficiency of complaint, not referred to in appellee's brief, will be deemed waived.—Glenn v. Lake Erie & W. R. Co., Ind., 73 N. E. Rep. 861.

10. APPEAL AND ERROR—Cross-Examination by Trial Court.—In an action tried by the court, plaintiff held not prejudiced by a rigorous cross-examination of himself as a witness by the trial judge.—Steioflug v. Wolfe, Iowa, 102 N. W. Rep. 1130.

11. APPEAL AND ERROR—Defective Summons.—A summons issued, materially defective, to which objection has been taken and preserved, will be quashed in a direct proceeding to reverse for error in refusing to quash it.—M. Fisher, Sons & Co. v. Crowley, W. Va., 50 S. E. Rep. 422.

12. APPEAL AND ERROR—Instructions Where Testimony is Uncontroverted.—The failure of the court to charge on a fact established by the uncontroverted testimony is not prejudicial to the party against whom such fact is properly found.—Evans v. Gray, Tex., 86 S. W. Rep. 375

13. APPEAL AND ERROR—Statement on Motion for New Trial.—The statement on motion for a new trial may be considered on appeal as to errors of law therein specified, though an appeal from the denial of a new trial was not taken.—Lynch v. Herrig, Mont., 80 Pac. Rep. 240.

14. APPEAL AND ERROR—Sufficiency of Assignments of Error.—An assignment of error complaining of two distinct rulings of the court is insufficient, and is not aided by propositions and statements in the brief explaining the several rulings.—International & G. N. Ry. Co. v. Boykin, Tex., 85 S. W. Rep. 1163.

15. APPEAL AND ERROR—Unlawful Detainer.—A principal in a *supersedeas* bond held the agent of a paid surety, so that acts done by the landlord with the principal's consent could not operate to discharge the surety.—Quandt v. Smith, Wash., 80 Pac. Rep 287.

16. ARBITRATION AND AWARD—Burden of Proving —Where an award is established in an action involving the same subject matter, the burden is on the adverse party to show facts relieving him from its legal effect.—Ridgill Bros v. Dupree, Tex., 85 S. W. Rep. 1166.

17. ASSIGNMENT FOR BENEFIT OF CREDITORS—Fraudulent Conveyances.—After an assignment for the benefit of creditors, an objection to the right of the creditor to sue the assignor to set aside a conveyance cannot be raised by the assignor.—Fidelity Nat. Bank v. Adams, Wash., 80 Pac. Rep. 284.

18. ASSOCIATIONS—Action Against Members.—Voluntary association cannot be sued in its name as such, but suits must be brought against its members.—Pearson v. Anderburg, Utah, 80 Pac. Rep. 807.

19. ASYLUMS—Quantum Meruit for "Keep of Lunatic."—A lunatic asylum is entitled to recover on a *quantum meruit* for the "keep of a lunatic," though the judgment of the county court committing the lunatic was void.—Hopper v. Eastern Kentucky Lunatic Asylum, Ky., 85 S. W. Rep. 1187.

20. ATTORNEY AND CLIENT—Right to Compromise Case.—An attorney at law, in the absence of express authorization, has no authority to compromise or settle a claim for his client.—Fleishman v. Meyer, Oreg., 80 Pac. Rep. 209.

21. BAIL—Sickness of Accused.—Confinement of accused with serious illness, physically incapacitating him from appearing on day indictment was returned, held not a release of recognizance.—Bonner v. Commonwealth, Ky., 85 S W. Rep. 1196.

22. BANKRUPTCY—Assignment for Benefit of Creditors.—Under Bankr. Act 1898, ch. 541, § 67, subd. "e," an assignment for the benefit of certain creditors, made more than four months before the filing of a petition in bankruptcy, held not avoidable by the trustee.—McIntire v. Jennings, Wash., 80 Pac. Rep 278.

23 BANKRUPTCY—Failure to Give Creditor's Correct Address.—A debt held not excepted from a discharge in bankruptcy under Bankr. Act 1898, ch. 541, § 17, cl. 3, because schedule did not give correct address of creditor.—Steele v. Thalheimer, Ark., 86 S. W Rep. 305.

24. BANKRUPTCY—Individual Liability of Partner.—Discharge of an individual liability of partner on a firm debt may be had in bankruptcy proceedings concerning that partner only.—Loomis v. Wallblom, Minn., 102 N. W. Rep. 1114.

25. BANKS AND BANKING—Executing Note for Railroad Company.—A trust company organized under Rev. St. 1899, § 1427, held to have power to execute a note for the benefit of a railroad company which it was financing.—First Nat. Bank v Guardian Trust Co., Mo., 86 S. W Rep. 109.

26. BENEFIT SOCIETIES — Beneficiaries. — Widow of member of fraternal order held entitled to death benefit in lieu of father of member, who was designated by member as beneficiary while the member was unmarried.—Larkin v. Knights of Columbus, Mass., 73 N. E. Rep. 850.

27. BENEFIT SOCIETIES — Restrictions on Actions. — A voluntary association cannot restrict the rights of the members to sue for benefits, so as to require them to first exhaust the remedies provided by tribunals of the association.—Pearson v. Anderburg, Utah, 80 Pac. Rep. 307.

28. BILLS AND NOTES—Co-Makers.—One who placed his name on the back of a note before delivery held liable as co-maker.—First Nat. Bank v. Guardian Trust Co., Mo., 86 S. W. Rep. 109.

29. BILLS AND NOTES—Renewal Notes.—The term "renewal," as applied to a note, means the re-establishment of the particular contract for another period of time.—Lowry Nat. Bank v. Fickett, Ga., 50 S. E. Rep. 396.

30. BILL OF EXCEPTIONS—Time for Signing.—Expiration of the time granted for the signing of bills of exceptions held not to prevent the supreme court from directing the subsequent signing thereof by *mandamus*.—State v. Gibson, Mo., 86 S. W. Rep. 177.

31. BOUNDARIES—Question of Fact.—The question of what land is embraced by a deed, the boundary calls of which are ambiguous, in that they would be satisfied by either of two lines, is one of fact.—Cole v. Mueller, Mo., 86 S. W. Rep. 193.

32. BURGLARY—Evidence Wrongfully Obtained.—In a prosecution for burglary letters written by prosecutor's daughter to defendant before commission of the offense held inadmissible to show a conspiracy between prosecutor and his wife to incarcerate defendant.—State v. Royce, Wash., 80 Pac. Rep. 268.

33. CARRIERS—Measure of Damages for Delayed Shipment.—Measure of damages for delay in the shipment is the difference between market value when freight arrived and the market value if it had been promptly delivered.—Houston & T. C. Ry. Co. v. Foster, Tex., 86 S. W. Rep. 44.

34. CARRIERS—Opportunity to Alight.—The relation of carrier and passenger ordinarily exists until the passenger has had a reasonable opportunity to alight at the place provided and to leave the carrier's premises in the direction ordinarily taken.—Glenn v. Lake Erie & W. R. Co., Ind., 73 N. E. Rep. 861.

35. CARRIERS—Powers of Railroad Commission.—Discretion vested in railroad commission should not be interfered with by the courts unless manifestly abused.—International & G. N. R. Co. v. Railroad Commission of Texas, Tex., 86 S. W. Rep. 16.

36. CARRIERS—Representations of Agent as to Best Route.—In action against railroad company for misrepresentations of ticket agent as to the proper route to be traveled, defendant held liable for resulting injuries.—St. Louis Southwestern Ry. Co. of Texas v. White, Tex., 86 S. W. Rep. 71.

37. CARRIERS—Unlawful Arrest of Passenger.—A railroad held liable for conduct of baggage master in assisting an officer in unlawfully arresting a passenger.—Texas Midland R. R. v. Dean, Tex., 85 S. W. Rep. 1135.

38. COMMERCE — Jurisdiction. — Only the coroner where the crime was committed held to have jurisdiction to hold an inquest in case of a person dying under circumstances indicating that he was foully dealt with.—Young v. Pulaski County, Ark., 85 S. W. Rep. 229.

39. COMMERCE—License for Sale of Trading Stamps.—A city ordinance requiring a license tax of persons selling goods by means of trading stamps held not void as an interference with interstate commerce under the evidence.—Oilure Mfg. Co. v. Pidduck-Ross Co., Wash., 80 Pac. Rep. 276.

40. CONSPIRACY—Right of Action.—A combination of two or more persons to injure one in his trade, by inducing his employees to break their contracts with him, is, if it results in damage, actionable.—Employing Printers' Club v. Doctor Blosser Co., Ga., 50 S. E. Rep. 353.

41. CONSTITUTIONAL LAW — Submission of Amendments.—Const. art. 10, § 2, requiring separate submission of constitutional amendments, applies only to amendments relating to independent subjects —Lobaugh v. Cook, Iowa, 102 N. W. Rep. 1121.

42. CONTRACTS—Damages for Delay in Performance.—One who furnishes logs to another to be cut held not entitled to recover damages for delay caused by the performance of another log-cutting contract of which he had knowledge.—Crawford v. Thomas, Ark., 86 S. W. Rep. 285.

43. CONTRACTS—Forfeiture Clause. — Equity will not permit the perversion of the forfeiture clause in a contract to a use for which it was never intended.—Buskirk Bros. v. Peck, W. Va., 50 S. E. Rep. 432.

44. CONTRACTS—Illegality of Consideration.—Contract for employment of servant to look after government and franchise matters held not void on it face, as contrary to public policy.—Kerr v. American Pneumatic Service Co., Mass., 73 N. E. Rep. 857.

45. CONTRACTS—Monopolies.—The true test of the validity at common law of a contract to fix the price of a commodity is whether it affords only a fair protection to the parties or whether it interferes with the interests of the public.—Finck v. Schneider Granite Co., Mo., 86 S. W. Rep. 213.

46. CONTRACTS—Rescission.—Rescission of a contract is *in toto*, leaving the rights of the parties to be determined in equity, and not by the abrogated contract.—Lytle v. Scottish-American Mortgage Co., Ga., 50 S. E. Rep. 402.

47. CORPORATIONS—Enforcement of Stockholders' Liability.—After a corporation has ceased to do business, service of summons on a former director and trustee was of no force on the other stockholders.—Stanton v. Gilpin, Wash., 80 Pac. Rep. 290.

48. CORPORATIONS—Minority Stockholders Intervening in Suit.—Minority stockholders, desiring to intervene in suit by corporation to prevent its dismissal, must allege facts showing that the corporation's interests will suffer if the suit be dismissed, or that they will be defrauded of their rights.—Ainsworth v. Evans, Ariz., 80 Pac. Rep. 344.

49. CORPORATIONS—Notice to Agent —Knowledge of an employee of a corporation as to a certain fact held notice to the corporation.—Baries v. Louisville Electric Light Co., Ky., 85 S. W. Rep. 1186.

50. CORPORATIONS—Ultra Vires Lease.—The making by a corporation of an *ultra vires* lease of its plant is not ground for a forfeiture of its franchise years after the avoidance of the lease.—State v. Cumberland Telephone & Telegraph Co., Tenn., 86 S. W. Rep. 390.

51. CORPORATIONS—Voluntary Service of Stockholder.—Where plaintiff voluntarily rendered services for a corporation of which he was the largest stockholder, he was not thereafter entitled to recover from the corporation therefor.—Sidway v. Missouri Land & Live Stock Co., Mo., 86 S. W. Rep. 150.

52. COVENANT—Eviction.—Where land is wild and unimproved it constitutes an exception to the rule that actual eviction is essential to the maintenance of an action for breach of a covenant against incumbrances.—Seldon v. Dudley E. Jones Co., Ark., 85 S. W. Rep. 778.

53. COVENANTS—Peaceable Possession.—An eviction, depriving the grantee of possession of premises which he holds under a warranty of peaceable and undisturbed possession, is a breach of the warranty.—Patterson v. Capon, Wis., 102 N. W. Rep. 1083.

54. CRIMINAL EVIDENCE—Letters of Husband and Wife.—Contents of letter written by defendant to wife, who is not permitted to testify thereto, may be proved by secondary evidence.—De Leon v. Territory, Ariz., 80 Pac. Rep. 348.

55. CRIMINAL TRIAL—Accomplice Testimony.—When there is no evidence against accused, except the uncor-

roborated testimony of accomplices, it is discretionary with the trial court whether to direct an acquittal.—Murphy v. State, Wis., 102 N. W. Rep. 1087.

56. CRIMINAL TRIAL—Comments on Defendant's Failure to Testify.—Comments by the prosecuting attorney on the failure of defendant to testify in his own behalf are reversible error.—Williams v. State, Tex., 85 S. W. Rep. 1144.

57. CRIMINAL TRIAL—Confessions.—The warning of an officer having custody of defendant that any statement of his might be used "for or against" him held not to authorize use of his confession.—Adams v. State, Tex., 86 S. W. Rep. 334.

58. CRIMINAL TRIAL—Confessions.—Testimony showing the presence of defendant at the time and place where another witness testified that defendant made a confession was admissible.—Gallegos v. State, Tex., 85 S. W. Rep. 1150.

59. CRIMINAL TRIAL—Delivering Instructions in Absence of Accused.—The judge may recall the jury and deliver further instructions, when the prisoner is present at the time, or his absence is not brought about by any act of the court.—Davis v. State, Ga., 50 S. E. Rep. 376.

60. CRIMINAL TRIAL—Instruction as to Defense of Insanity.—An instruction on an issue of insanity, in a prosecution for murder, that defendant should not be found insane because of mere symptoms of melancholy, moroseness, depression, etc., held erroneous.—Steward v. State, Wis., 102 N. W. Rep. 1079.

61. CRIMINAL TRIAL—Mistrial as Constituting Former Jeopardy.—In capital cases the trial judge may discharge the jury and order a mistrial, but must find the facts fully and place them on record.—State v. Tyson, N. Car., 50 S. E. Rep. 456.

62. CRIMINAL TRIAL — Shorthand Notes of Absent Witness.—Shorthand notes of an absent witness' testimony given on a former trial held inadmissible against accused on a retrial of the case.—Smith v. State, Tex., 85 S. W. Rep. 1153.

63. DAMAGES—Agreement as to Damages.—The validity of an agreement as to damages, if contract is rescinded because of the vendee's default, is to be determined by the law applicable to liquidated damages.—Lytle v. Scottish American Mortg. Co., Ga., 50 S. E. Rep. 402.

64. DAMAGES—Injuries to Passenger.—In an action for injuries to a passenger, an instruction authorizing recovery for pain of body or anguish of mind which would reasonably and directly result from the injury held proper.—Fuchs v. St. Louis Transit Co., Mo., 86 S. W. Rep. 458.

65. DEATH—Right of Action by Minor Married Daughter.—Married minor daughter held not prevented from recovering damages for the death of her mother, because of her marriage.—International & G. N. Ry. Co. v. Boykin, Tex., 85 S. W. Rep. 1163.

66. DOMICILE—Of Infant After Father's Death.—Domicile of mother after father's death is the domicile of her infant child, and appointment of guardian in the state of mother's domicile is valid.—Garth v. City Sav. Bank, Ky., 86 S. W. Rep. 320.

67. ELECTIONS—Harmless Error.—In an election contest, where the commissioner presiding at a recount of the ballots erroneously failed to count three ballots for the contestant and about the same number for the contestee, the error held not cause for reversal.—Preston v. Price, Ky., 85 S. W. Rep. 1183

68 EMBEZZLEMENT—Check as Evidence of Money Appropriated.—In a prosecution for embezzlement of money, check by which defendant drew the money from the bank held admissible in evidence.—De Leon v. Territory, Ariz., 80 Pac. Rep. 348.

69. EMINENT DOMAIN—Additional Servitude.—A reasonable use of a public highway for poles and wires for a telephone for public use under legislative authority is not an additional servitude.—Lowther v. Bridgeman, W. Va., 50 S. E. Rep. 410.

70. EQUITY—Jurisdiction.—A court of equity could entertain jurisdiction of a suit against a legal representative, where there was no adequate remedy at law.—Bailey v. McAlpin, Ga., 50 S. E. Rep. 388.

71. EQUITY—Jurisdiction of Land in Another State.—Equity, having jurisdiction of a defendant's person, has jurisdiction to enter any decree affecting lands in controversy situated in another state.—Butterfield v. Nogales Copper Co., Ariz., 80 Pac. Rep. 345.

72. ESTOPPEL—Title to Land.—Heirs of a grantor of land held estopped to question the title of a remote grantee.—Hubbard v. Kansas City Stained Glass Works & Sign Co., Mo., 86 S. W. Rep. 82.

73. EVIDENCE—Construction of Deed.—Acts of the parties cannot be received to aid in the construction of a deed which is not in any way ambiguous or indefinite.—Kruse v. Koelzer, Wis., 102 N. W. Rep. 1072.

74. EVIDENCE—Contract for Shipment of Live Stock.—A written contract held not to prevent the shipper of cattle from showing the terms of an oral contract under which the cattle were loaded and were to be shipped.—McNeill v. Galveston, H. & N. Co., Tex., 86 S. W. Rep. 32.

75. EVIDENCE—Distance Required to Stop Train.—Professed tests of air brakes, being advertisements of the manufacturer, held not admissible against a railroad company as evidence of the distance required to stop a train.—Illinois Cent. R. Co., v. Stith's Adm'x., Ky., 85 S. W. Rep. 1173.

76. EVIDENCE Expressions of Pain.—Testimony of an injured person that he is hurt "in or about the groins" is the expression of present physical pain, and admissible as *res gestae*.—Texas Cent. R. Co. v. Powell, Tex., 86 S. W. Rep. 21.

77. EVIDENCE — Memorandum Book.—Memorandum book kept by agent held competent evidence, after his death, as to transactions with his principal.—Jewell v. Jewell's Estate, Mich., 102 N. W. Rep. 1059.

78. EVIDENCE—Sale of Land —Where a land contract calls for certain payments designated as purchase money and other payments designated as rent, parol evidence is admissible to show the latter a device to obtain a penalty.—Lytle v. Scottish-American Mortgage Co., Ga., 50 S. E. Rep. 402.

79. EXECUTORS AND ADMINISTRATORS—Conversion by Administrator.—An administrator, having converted a bank deposit standing in the name of his intestate which the latter had given to plaintiff, held liable therefor, both in his representative and individual capacity.—Hill v. Escort, Tex., 86 S. W. Rep. 367.

80. EXECUTORS AND ADMINISTRATORS — Failure to Account.—An administrator who wishes to collect a debt due from decedent should present his claim under Rev. St. 1899, § 205, and is not justified in failing to account for moneys collected by him.—State v. Stuart, Mo., 86 S. W. Rep. 471.

81. EXECUTORS AND ADMINISTRATORS—Filing Claims.—On presentation of a claim against an estate to the administrator for allowance, it is not necessary to present the agreement on which the claim was founded.—Altgelt v. Elmendorf, Tex., 86 S. W. Rep. 41.

82. EXECUTORS AND ADMINISTRATORS—Nomination by Next of Kin.—The next of kin held not to waive right to make another nomination for administrator by appealing.—*In re* Wooten's Estate, Tenn., 85 S. W. Rep. 1105.

83. EXECUTORS AND ADMINISTRATORS — Partnership Accounting.—Pendency of proceedings for settlement of the estate of a deceased partner in a county court held not to deprive the circuit court of jurisdiction of a bill for an accounting by an administrator of another partner, previously deceased.—Stehn v. Hayssen, Wis., 102 N. W. Rep. 1074.

84. EXECUTORS AND ADMINISTRATORS—Remedies on Bond.—An administrator *de bonis non* may sue his predecessor on his bond without establishing against the principal either a liability in his representative capacity or a devastavit by him.—Bailey v. McAlpin, Ga., 50 S. E. Rep. 388.

85. EXECUTORS AND ADMINISTRATORS—Sale of Real Estate.—Certain non-resident heirs held not parties to a probate proceeding for the distribution of rents of real estate, through the administrator as their representative, under Code, § 3333.—Milburn v. East, Iowa, 102 N. W. Rep. 1116.

86. EXTRADITION—Identity of Prisoner.—A rendition warrant in proper form is *prima facie* evidence that the person held in custody thereunder is the person demanded.—Gillis v. Leekley, Wash., 80 Pac. Rep. 860.

87. FIRE INSURANCE—Assignment.—Where an assignment of an insurance policy in due form by the directors of a company is averred without denial, the authority of the board to make the assignment must be presumed, in the absence of evidence to the contrary.—Cass County v. Mercantile Town Mut. Ins. Co., Mo., 86 S. W. Rep. 237.

88. FIXTURES—Right to Remove Building.—Contention that right of tenant to remove buildings from demised premises, as provided in lease, was destroyed because of letter notifying him that he might continue as tenant, held untenable.—Lynn v. Waldron, Wash., 80 Pac. Rep. 292.

89. FRAUDS, STATUTE OF—Agreements as to Crop.—A landlord's assent to his tenant's agreement to ship plaintiff 400 sacks of rice, as part of an agreement by which plaintiff loaned $200 to the tenant, held not a contract to answer for the tenant's default, within the statute of frauds.—Groesbeck v. T. H. Thompson Milling Co., Tex., 86 S. W. Rep. 346.

90. FRAUDS, STATUTE OF—Lex Loci Contractus.—A contract made in Illinois for the sale of butter, to be shipped to the buyer in Missouri, was an Illinois contract, and not within the Missouri statute of frauds.—F. W. Brockman Commission Co. v. Kilbourne, Mo., 86 S. W. Rep. 275.

91. FRAUDULENT CONVEYANCES—Inadequacy of Consideration.—Inadequacy of consideration is generally held to be evidence of fraud, but not necessarily conclusive.—F. & M. Schaefer Brewing Co. v. Moebs, Mass., 73 N. E. Rep. 858.

92. FRAUDULENT CONVEYANCES—Purchasers With Notice.—Where plaintiff was not *in pari delicto* with any wrongdoers in making certain fraudulent conveyances of land, it was entitled to fortify its title by purchasing a mortgage lien originally prepared to defraud plaintiff.—Hayward v. Smith, Mo., 86 S. W. Rep. 183.

93. GIFTS—Savings Bank Deposit.—In an action by a donee to recover a bank deposit from the donor's administrator, the writing by which plaintiff acquired title need not be pleaded, in order to be proved.—Hill v. Escort, Tex., 86 S. W. Rep. 367.

94. GARNISHMENT—Findings.—In the absence of a finding that the garnishee had money or property belonging to the debtor, a judgment in the creditor's favor against such garnishee was erroneous.—Groesbeck v. T. H. Thompson Milling Co., Tex., 86 S. W. Rep. 33.

95. GRAND JURY—Challenges.—The disqualification of certain members of the grand jury because of service as grand jurors at a prior term of the court is ground for challenge at the trial.—Phillips v. Brown, Ga., 50 S. E. Rep. 361.

96. HABEAS CORPUS—Illegal Restraint—Person hired out to work out a fine and costs pending an appeal held illegally restrained of his liberty, within the meaning of the *habeas corpus* act.—*Ex parte* Winford, Tex., 85 S. W. Rep. 1146.

97. HOMESTEAD—What Constitutes.—In a suit to enjoin the sale of land under execution on the ground that the land was plaintiff's homestead, evidence held sufficient to justify a finding that the land was a homestead.—Holland v. Zillion, Tex., 86 S. W. Rep. 36.

98. HOMICIDE—Degrees.—If a design to kill is formed in a mind excited by passion, and cooling time has not elapsed, the homicide is not greater than murder in the second degree.—Manning v. State, Tex., 85 S. W. Rep. 1149.

99. HOMICIDE—Manslaughter.—Where the slayer acts from an honest belief that it is necessary to protect himself, even though the facts did not justify it, such belief may reduce the homicide from murder to manslaughter.—Allison v. State, Ark., 86 S. W. Rep. 409.

100. HOMICIDE—Self-Defense.—Where accused was guilty of murder in the second degree, he was not prejudiced by an instruction which was erroneous for failure to make deliberations necessary to constitute murder in the first degree.—Thomas v. State, Ark., 86 S. W. Rep. 404.

101. INDICTMENT AND INFORMATION—Verification.—Where the prosecuting officer acts *ex mero motu*, the defendant cannot raise the plea that the officer should have taken a special oath to information.—State v. Smith, La., 38 So. Rep. 202.

102. INTERPLEADER—Garnishment.—In garnishment proceedings, where all claimants were made parties as principal defendant or garnishees, no interpleader was necessary to adjudicate the rights of the parties.—Eau Claire Nat. Bank v. Chippewa Valley Bank, Wis., 102 N. W. Rep. 1068.

103. INTOXICATING LIQUORS—Illegal Sale.—A sale of liquor, shipped from one county to another C. O. D. on an order subject to the approval of the consignor, held to be in the county from which it is shipped, as respects the local option law.—Novich v. State, Tex., 86 S. W. Rep. 332.

104. INTOXICATING LIQUORS—Indictment.—An indictment for selling liquor in violation of the local option law must allege the name of the purchaser.—Ellington v. State, Tex., 86 S. W. Rep. 330.

105. INTOXICATING LIQUORS—Place of Sale—Sale of whisky pursuant to order held to take place at the point of shipment.—Joseph v. State, Tex., 86 S. W. Rep. 326.

106. INTOXICATING LIQUORS—Place of Sale.—Shipment of whisky C. O. D. on an order taken in a local option district held insufficient to sustain a conviction for violation of the local option law in such district.—Parker v. State, Tex., 85 S. W. Rep. 1155.

107. INTOXICATING LIQUORS—Sale to Minor.—A general consent by a parent to the giving of liquor at any time to a minor held no defense on a prosecution for giving the minor liquor under Shannon's Code, § 6786.—Pressly v. State, Tenn., 86 S. W. Rep. 378.

108. INTOXICATING LIQUORS—Unreasonable Requirements as to Petition for License.—An ordinance of a city of more than 2,000 inhabitants, requiring an annual two-thirds majority petition of the entire city for the issuance of a dramshop license, held void for unreasonableness.—State v. McCammon, Mo., 86 S. W. Rep. 510.

109. JUDGMENT—Charitable Corporation.—A judgment against a charitable corporation does not conclude any question as to whether its property is subject to execution.—Woman's Christian National Library Assn. v. Fordyce, Ark., 86 S. W. Rep. 417.

110. JUDGMENT—Mortgages.—A creditor of a mortgagor, having recovered a judgment against him after sale on foreclosure, held entitled to enforce such judgment against the land on its being redeemed by the mortgagor's subsequent guarantee.—Kaston v. Storey, Oreg., 80 Pac. Rep. 217.

111. JUDGMENT—Parties Bound.—Where *bona fide* purchasers of property were not parties to a suit to set aside a prior release of a deed of trust thereon, they were not bound by the judgment.—Bristow v. Thackston, Mo., 86 S. W. Rep. 94.

112. LIBEL AND SLANDER—Newspaper Articles.—A newspaper article, purporting only to give acts, theories and representations of officers of the law with reference to plaintiff's pursuit, arrest, trial, and acquittal of burglary, held not libelous *per se*.—McClure v. Review Pub. Co., Wash., 80 Pac. Rep. 303.

113. LICENSES—Timber Privileges.—Except in extreme cases, the court cannot determine as a matter of law whether the reasonable time within which the grantee of

a timber privilege should exercise the same has expired.—Brinson & Co. v. Kirkland, Ga., 50 S. E. Rep. 369.

114. LIFE ESTATES—Improvements.—The grantee of a life tenant held not entitled to recover for improvements made by him of the remaindermen, on their recovering possession after death of the life tenant.—Gray v. Soden, Ky., 86 S. W. Rep. 515.

115. LIMITATION OF ACTIONS—Part Payment.—Where a payment on a note was made to one holding possession thereof for collection, such payment was sufficient to stop the running of limitations.—Warnock v. Itawis, Wash., 80 Pac. Rep. 297.

116. LIMITATION OF ACTIONS—Pleadings.—The question of limitations may be raised by demurrer, where the petition shows on its face that the action is barred.—French v. Bowling, Ky., 85 S. W. Rep. 1182.

117. LIMITATION OF ACTIONS—Relationship of Parties.—Relation between principal and agent to collect and remit moneys held not such a trust relation as to suspend the running of limitations.—Jewell v. Jewell's Estate, Mich., 102 N. W. Rep. 1059.

118. LOGS AND LOGGING—Contract for Sale of Timber.—Under a contract of sale of growing timber, to be cut and removed by the vendee, vendor held to have waived the benefit of a forfeiture clause.—Buskirk Bros. v. Peck, W. Va., 50 S. E. Rep. 432.

119. MARRIAGE—Repute and Cohabitation.—Validity of contract of marriage held not affected by secret intentions or mental reservation of one of the parties.—*In re* Imboden's Estate, Mo., 86 S. W. Rep. 263.

120. MASTER AND SERVANT—Assumed Risk.—A servant did not assume the risk of a dangerous scaffolding, unless a man of ordinary prudence, under the circumstances, would have refused to go upon it at the master's bidding.—Neves v. Green, Mo., 86 S. W. Rep. 508.

121. MASTER AND SERVANT—Concurrent Negligence.—Master held liable for injuries to servant caused by concurrent negligence of himself and a fellow servant, but not liable for injuries caused by the sole negligence of the fellow servant.—Gila Valley, G. & N. Ry. Co. v. Lyon, Ariz., 80 Pac. Rep. 337.

122. MASTER AND SERVANT—Contributory Negligence.—An engineer, who took his engine for water onto the main track on the time of a passenger train, held not guilty of contributory negligence, in view of his steps to give notice.—Illinois Cent. R. Co. v. Stith's Admx., Ky., 85 S. W. Rep. 1173.

123. MASTER AND SERVANT—Defective Elevators.—A servant, injured while attempting to use an elevator which had become defective to defendant's knowledge, held not to have assumed the risk.—Zongker v. People's Union Mercantile Co., Mo., 86 S. W. Rep. 486.

124 MASTER AND SERVANT—Fellow Servants.—Danger arising from the negligence of a fellow servant is one assumed by a servant on entering the employment.—Louisville & N. R. Co. v. Dillard, Tenn., 86 S. W. Rep. 313.

125. MASTER AND SERVANT—Fellow Servant Act.—Negligence of a fellow servant, resulting in injury to plaintiff, held not to have occurred in any duty he owed to the master, so as to render the latter liable for plaintiff's injuries under the fellow servant act.—Overton v. Chicago, R. I. & P. Ry. Co., Mo., 86 S. W. Rep. 503.

126. MASTER AND SERVANT—Injury to Railroad Brakeman.—A railroad brakeman did not assume the risk of a violation by other employees of a rule requiring cars standing on a grade siding to be coupled together.—St. Louis, Southwestern Ry. Co. of Texas v. Pope, Tex., 86 S. W. Rep. 5.

127. MASTER AND SERVANT—Negligence of Superintendent.—Superintendent held engaged in act of superintendence, although he chose to prosecute the work by means originally employed by the men under him.—Meagher v. Crawford Laundry Mach. Co., Mass., 73 N. E. Rep. 853.

128. MASTER AND SERVANT—Safe Place to Work.—It is the duty of a master to furnish the servant with a reasonably safe place to work.—Purcell v. Tennant Shoe Co., Mo., 86 S. W. Rep. 121.

129. MASTER AND SERVANT—Safe Place to Work.—The duty of the master with reference to furnishing the servant with a place to work and with appliances only requires him to furnish a reasonably safe place and appliances.—Texas & P. Ry. Co. v. Hemphill, Tex., 86 S. W. Rep. 350.

130. MINES AND MINERALS—Construction of Lease.—A lease of the right to take phosphate rock from the lessor's land could not be abandoned by the lessee merely because the rock was found in pockets and not in stratified layers.—McGavock v. Virginia Carolina Chemical Co., Tenn., 86 S. W. Rep. 380.

131. MINING CLAIMS—Discovery of Vein.—That gold and silver bearing rock showing the surface is found is a sufficient discovery of a vein to authorize location of a mining claim under the federal statute.—Score v. Griffin, Ariz., 80 Pac. Rep. 331.

132. MORTGAGES—Bona Fide Purchasers.—*Bona fide* purchasers of real estate without knowledge of a fraudulent release of a deed of trust thereon held not affected by the fraud.—Bristow v. Thackston, Mo., 86 S. W. Rep. 94.

133. MORTGAGES—Description of Parties.—A mortgage to a firm without mention of the individual names of the partners, may be foreclosed in equity, though not enforceable at law.—Carpenter v. Zarbuck, Ark., 86 S. W. Rep. 299.

134. MORTGAGES—Irregularities in Foreclosure Sale.—The fact that a sale by a trustee in a trust deed is irregular can be taken advantage of by the mortgagor, or one claiming under him, only by an action to redeem.—Adams v. Carpenter, Mo., 86 S. W. Rep. 445.

135. MUNICIPAL CORPORATIONS—Defective Sidewalks.—In an action for injuries on a defective city sidewalk, an instruction that a person traveling on a sidewalk is entitled to assume that it is in a reasonably safe condition for travel held proper.—Lemman v. City of Spokane, Wash., 80 Pac. Rep. 280.

136. MUNICIPAL CORPORATIONS—Defective Streets.—Stranger arriving in town at night held not guilty of contributory negligence in walking along the street to her destination.—Conner v. City of Nevada, Mo., 86 S. W. Rep. 256.

137. MUNICIPAL CORPORATIONS—Duty to Enclose Reservoir.—City reservoir, situated in a public park, held a place of danger which the city was bound to exercise reasonable care in surrounding with barriers.—Carey v. Kansas City, Mo., 86 S. W. Rep. 438.

138. MASTER AND SERVANT—Fellow-Servants.—Conductor of passenger train held a fellow-servant with a brakeman on a freight train.—Louisville & N. R. Co. v. Dillard, Tenn., 86 S. W. Rep. 313.

139. MUNICIPAL CORPORATIONS—Liability of City Officers for Defective Bridge.—Mayor and member of city council held not personally liable for failing to repair a defective bridge.—Gray v. City of Batesville, Ark., 86 S. W. Rep. 295.

140. MUNICIPAL CORPORATIONS—Payment of Warrants.—The form of a warrant attempting to carry on its face an agreement in accordance with an ordinance prohibiting its acceptance as payment of debts due the city until previous warrants have been paid, does not change its legal effect.—*Ex parte* Willis, Ark., 86 S. W. Rep. 300.

141. NEGLIGENCE—Increased Injuries.—Injured persons held entitled to recover from *tort feasor* damages resulting from another injury, which would not have resulted except for the original injury.—Conner v. City of Nevada, Mo., 86 S. W. Rep. 256.

142. NEGLIGENCE—Injury to Child.—Where a boy five years old is injured on a sidewalk by an obstruction thereon, he is not chargeable with failing to exercise that ordinary care which a reasonably prudent person would exercise.—Parrish v. City of Huntington, W. Va. 50 S. E. Rep. 416.

143. PARENT AND CHILD—Failure to Support.—Where, after a father lawfully leaves his children, they become destitute, and he then willfully fails to support them, it is a violation of Pen. Code 1895, § 114.—Brown v. State, Ga., 50 S. E. Rep. 378.

144. PARENT AND CHILD—Parent's Right of Action for Negligence.—Acts of a surviving parent in assisting her minor son to recover for loss of earnings held an abandonment of her right to such earnings.—Zongker v. People's Union Mercantile Co., Mo., 86 S. W. Rep. 486.

145. PARTITION—Judicial Sale.—A judicial sale held to be confirmed, though taxes are a lien on the property, as the purchaser will be credited therewith.—Wise v. Wolfe, Ky., 85 S. W. Rep. 1191.

146. PARTNERSHIP—Check of Partnership.—Check of partnership to one of the partners held an individual and not a partnership transaction, so that an indorsee was entitled to maintain action thereon.—Caldwell v. Dismukes, Mo., 86 S. W. Rep. 270.

147. PARTNERSHIP—Retirement of Partner.—There is an equity between partners to compel application of firm assets to the payment of debts, which may be preserved by an outgoing partner.—Reddington v. Franey, Wis., 102 N. W. Rep. 1065.

148. PAUPERS—Statutes.—The provision of Rev. Laws, ch. 80, § 6, that a person absent from the commonwealth for ten consecutive years shall lose his settlement as a pauper, held not retroactive.—City of Lawrence v. Town of Methuen, Mass., 73 N. E. Rep. 860.

149. PAYMENT—Application.—It is too late for either party to claim the right to make an appropriation of payment after a controversy has arisen.—Austin v. Southern Home Building & Loan Ass'n, Ga., 50 S. E. Rep. 382.

150. PERPETUITIES—Devise to Vestrymen of Church.—A devise to the vestrymen of a church and to their successors, with power to sell, exchange, or dispose of the property, does not offend the rule against perpetuities.—Biscoe v. Thweatt, Ark., 86 S. W. Rep. 432.

151. PLEADING — Cross-Complaint. — Where a cross-complaint contains sufficient allegations to support a judgment, defects are waived by withdrawing a demurrer, filing an answer, and introducing evidence.—Smith v. King of Arizona Min. & Mill. Co., Ariz., 80 Pac. Rep. 357.

152. QUO WARRANTO—School Districts.—A proceeding in the nature of *quo warranto* to determine the legality of the organization of a school district held properly brought against the school directors and not against the district.—State v. McClain, Mo., 86 S. W. Rep. 135.

153. RAILROADS — Duty of Rear Brakeman. — A rear brakeman on the last car of a freight train, after derailment thereof, held not required to remain thereon and apply the brakes, in order to shorten the stop.—Harper v. St. Louis Merchants' Bridge & Terminal Co., Mo., 86 S. W. Rep. 99.

154. RAILROADS—Wanton Negligence Causing Death to Trespasser.—Railroad held liable for death of a trespasser, whom the railroad's servants made no effort to save.—Reyburn v. Missouri Pac. Ry. Co., Mo., 86 S. W. Rep. 174.

155. REFORMATION OF INSTRUMENTS—Effect on Title.—Where a deed is reformed, so as to include all the intended grantees, its effect is to vest in them, as of the date of the deed, an equal undivided part interest in the premises.—Franklin v. Cunningham, Mo., 86 S. W. Rep. 79.

156. RELEASE—Obtainment by Fraud.—A release executed by one misled as to its meaning or incapacitated to make a contract is ineffectual to defeat an action.—State v. Stewart, Mo., 86 S. W. Rep. 471.

157. SALES—Executory Contract.—If by an executory contract the vendee is required to expend money and perform labor on the property, so as to change its character, title to it as so altered will vest in the purchaser.—Buskirk Bros. v. Peck, W. Va., 50 S. E. Rep. 432.

158. SHERIFFS AND CONSTABLES—Conversion.—In an action against defendants for conversion of personal property belonging to plaintiff, located in a houseboat levied on, evidence held to sustain a verdict for plaintiff.—Lucas v. Sheridan, Wis., 102 N. W. Rep. 1077.

159. SPECIFIC PERFORMANCE — Parol Contract with Persons Since Deceased.—Acts of young physician, who had formed partnership with older one of marked ability and prestige, held not anything out of the usual order, or which would not be expected, so as to satisfy rule as to proof in suits to compel specific performance of parol contracts with persons since dead.—Rosenwald v. Middlebrook, Mo., 86 S. W. Rep. 200.

160. STREET RAILROADS—Conditions Imposed in Franchise.—Where a street railway company, in accepting a franchise, agrees to certain conditions imposed by the municipality, it is estopped from thereafter saying that the conditions are not reasonable.—*In re* Topping Ave., Mo., 86 S. W. Rep. 190.

161. TAXATION—Tax Sale. — Conveyance of lands by owner held to operate as ratification of unauthorized redemption from tax sale by stranger, so that tax deed subsequently executed was void.—Sloan v. Cobb, Ark., 85 S. W. Rep. 1126.

162. TENANCY IN COMMON—Damage to Property.—In an action by a joint owner of personalty for damages thereto, held, that he was bound to show with reasonable certainty the extent of his interest.—Waggoner v. Snody, Tex., 85 S. W. Rep. 1134.

163. TRIAL—Instructions.—Comments on the evidence and credibility of witnesses should be avoided in instructions.—*In re* Imboden's Estate, Mo., 86 S. W. Rep. 263.

164. TRIAL—Reading Law to Jury.—Court should refuse to allow counsel to read law books in addressing the jury, if objected to.—Ray v. Chesapeake & O. Ry. C., W. Va., 50 S. E. Rep. 413.

165. TRUSTS—Resulting Trusts.—Co-purchaser of real property under contract in name of another held not entitled to enforce resulting trust in land until the title has passed from vendor.—Lynch v. Herrig, Mont., 80 Pac. Rep. 240.

166. VENDOR AND PURCHASER—Inability to Convey on Date Specified.—Where a vendor had no title on a date specified for performance of the contract to convey, the vendee or his assignee was entitled to rescind without tender, on his demand for performance not being accepted.—Webb v. Hancher, Iowa, 102 N. W. Rep. 1127.

167. VENDOR AND PURCHASER—Specific Performance.—A conditional release of a mortgage on land contracted to be sold held not to discharge the mortgage, nor render the title marketable, so as to entitle the vendors to specific performance. — Spooner v. Cross, Iowa, 102 N. W. Rep. 1118.

168. VERDICTS—Review of Facts.—The supreme court will draw the strongest inference in favor of a verdict that is warranted by the evidence.—St. Louis, I. M. & S. Ry. Co. v. Hill, Ark., 86 S. W. Rep. 303.

169. WILLS—Pleading.—In a proceeding to establish an alleged lost will, a paragraph of the answer pleading an amicable partition of the property between the legatees and devisees as an estoppel held properly stricken.—Mann v. Balfour, Mo., 86 S. W. Rep. 103.

170. WITNESSES—Answering Incriminating Questions.—Where a witness is informed that he will not be required to answer questions criminating himself, the statement in an answer was admissible against him in the subsequent trial.—Davis v. State, Ga., 50 S. E. Rep. 376.

171. WITNESSES—Husband and Wife.—In an action against a husband for physician's services rendered to his wife, the wife was a competent witness.—Morgenroth v. Spencer, Wis., 102 N. W. Rep. 1086.

172. WITNESSES—Privileged Communications.—Sheriff, who read letter written by defendant while in jail to his wife, may testify to its contents without violating the rule as to privileged communications.—De Leon v. Territory, Ariz., 80 Pac. Rep. 348.